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**SUBSTITUTE SENATE BILL 5293**

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**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, Lias, Frockt, Pedersen, and Wellman; by request of Governor Inslee)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to energy efficiency; amending RCW 19.27A.140,  
2 19.27A.170, 19.27A.015, 19.27A.020, 19.27A.025, and 19.27.540; adding  
3 new sections to chapter 19.27A RCW; adding a new section to chapter  
4 82.16 RCW; adding new sections to chapter 80.28 RCW; creating new  
5 sections; prescribing penalties; and providing an expiration date.

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

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

16 (2) Studies by the Northwest power and conservation council and  
17 by individual Washington utilities repeatedly show that efficiency is  
18 the region's largest, cheapest, lowest risk energy resource; that  
19 without it, the Northwest would have needed to invest in additional  
20 natural gas-fired generation; and that, looking ahead, efficiency can  
21 approach the size of the region's hydropower system as a regional

1 resource. The Northwest power and conservation council forecasts that  
2 with an aggressive new energy efficiency policy, the region can  
3 potentially meet one hundred percent of its electricity load growth  
4 over the next twenty years with energy efficiency.

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A  
12 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (18) "Investor-owned utility" means a company owned by investors,  
40 that meets one of the definitions of RCW 80.04.010, and that is

1 engaged in distributing electricity to more than one retail electric  
2 customer in the state.

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A  
29 RCW to read as follows:

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

32 (b) In developing energy performance standards, the department  
33 shall seek to maximize reductions of greenhouse gas emissions from  
34 the building sector. The standard must include energy use intensity  
35 targets by building type and methods of conditional compliance that  
36 include an energy management plan, operations and maintenance  
37 program, energy efficiency audits, and investment in energy  
38 efficiency measures designed to meet the targets. The department  
39 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for

1 standard development. The department must update the standard by July  
2 1, 2029, and every five years thereafter.

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

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

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

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

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

38 (ii) For those buildings or structures that are listed in the  
39 state or national register of historic places; designated as a  
40 historic property under local or state designation law or survey;

1 certified as a contributing resource with a national register listed  
2 or locally designated historic district; or with an opinion or  
3 certification that the property is eligible to be listed on the  
4 national or state registers of historic places either individually or  
5 as a contributing building to a historic district by the state  
6 historic preservation officer or the keeper of the national register  
7 of historic places, no individual energy efficiency requirement need  
8 be met that would compromise the historical integrity of a building  
9 or part of a building.

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

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

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

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

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

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

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

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

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

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

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

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

13 (v) The building is an agricultural structure; or

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

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

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

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

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

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

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



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

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

5 (d) Failure to provide a valid exemption certificate.

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

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

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

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

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

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

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

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

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.27A  
38 RCW to read as follows:

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

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

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

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

19 (a) The building is either: (i) A covered commercial building  
20 subject to the requirements of the standard established under section  
21 3 of this act; or (ii) a multifamily residential building where the  
22 floor area exceeds fifty thousand gross square feet, excluding the  
23 parking garage area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.27A  
36 RCW to read as follows:

37 The department may not issue a certification for an incentive  
38 application under section 4 of this act if doing so is likely to

1 result in total incentive payments under section 4 of this act in  
2 excess of seventy-five million dollars.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.27A  
4 RCW to read as follows:

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

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

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

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

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

38 (5) An entity that administers the payments for the incentive  
39 program under this section is not liable for excess payments made in

1 reliance on amounts reported by the department as due and payable as  
2 provided under section 4 of this act, if such amounts are later found  
3 to be abnormal or inaccurate due to no fault of the business.

4 NEW SECTION. **Sec. 7.** This section is the tax preference  
5 performance statement for the tax preference contained in section 8,  
6 chapter . . ., Laws of 2019 (section 8 of this act). This performance  
7 statement is only intended to be used for subsequent evaluation of  
8 the tax preference. It is not intended to create a private right of  
9 action by any party or be used to determine eligibility for  
10 preferential tax treatment.

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

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

21 (3) The joint legislative audit and review committee is not  
22 required to perform a tax preference review under chapter 43.136 RCW  
23 for the tax preference contained in section 8, chapter . . ., Laws of  
24 2019 (section 8 of this act), and it is the intent of the legislature  
25 to allow the tax preferences to expire upon its scheduled expiration  
26 date.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.16  
28 RCW to read as follows:

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

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

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

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

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

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

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

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

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

31 (6) This section expires June 30, 2032.

32 **Sec. 9.** RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each  
33 amended to read as follows:

34 The definitions in this section apply to RCW 19.27A.130 through  
35 19.27A.190 and 19.27A.020 unless the context clearly requires  
36 otherwise.

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

- 1 (2) "Conditioned space" means conditioned space, as defined in  
2 the Washington state energy code.
- 3 (3) "Consumer-owned utility" includes a municipal electric  
4 utility formed under Title 35 RCW, a public utility district formed  
5 under Title 54 RCW, an irrigation district formed under chapter 87.03  
6 RCW, a cooperative formed under chapter 23.86 RCW, a mutual  
7 corporation or association formed under chapter 24.06 RCW, a port  
8 district formed under Title 53 RCW, or a water-sewer district formed  
9 under Title 57 RCW, that is engaged in the business of distributing  
10 electricity to one or more retail electric customers in the state.
- 11 (4) "Cost-effectiveness" means that a project or resource is  
12 forecast:
- 13 (a) To be reliable and available within the time it is needed;  
14 and
- 15 (b) To meet or reduce the power demand of the intended consumers  
16 at an estimated incremental system cost no greater than that of the  
17 least-cost similarly reliable and available alternative project or  
18 resource, or any combination thereof.
- 19 (5) "Council" means the state building code council.
- 20 (6) "Embodied energy" means the total amount of fossil fuel  
21 energy consumed to extract raw materials and to manufacture,  
22 assemble, transport, and install the materials in a building and the  
23 life-cycle cost benefits including the recyclability and energy  
24 efficiencies with respect to building materials, taking into account  
25 the total sum of current values for the costs of investment, capital,  
26 installation, operating, maintenance, and replacement as estimated  
27 for the lifetime of the product or project.
- 28 (7) "Energy consumption data" means the monthly amount of energy  
29 consumed by a customer as recorded by the applicable energy meter for  
30 the most recent twelve-month period.
- 31 (8) "Energy service company" has the same meaning as in RCW  
32 43.19.670.
- 33 (9) "Enterprise services" means the department of enterprise  
34 services.
- 35 (10) "Greenhouse gas" and "greenhouse gases" includes carbon  
36 dioxide, methane, nitrous oxide, hydrofluorocarbons,  
37 perfluorocarbons, and sulfur hexafluoride.
- 38 (11) "Investment grade energy audit" means an intensive  
39 engineering analysis of energy efficiency and management measures for

1 the facility, net energy savings, and a cost-effectiveness  
2 determination.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4 (22) "Building owner" has the same meaning as defined in section  
5 2 of this act.

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

8 **Sec. 10.** RCW 19.27A.170 and 2009 c 423 s 6 are each amended to  
9 read as follows:

10 (1) On and after January 1, 2010, qualifying utilities shall  
11 maintain records of the energy consumption data of all nonresidential  
12 and qualifying public agency buildings to which they provide service.  
13 This data must be maintained for at least the most recent twelve  
14 months in a format compatible for uploading to the United States  
15 environmental protection agency's energy star portfolio manager.

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

23 (3) In carrying out the requirements of this section, a  
24 qualifying utility shall use any method for providing the specified  
25 data in order to maximize efficiency and minimize overall program  
26 cost. Qualifying utilities are encouraged to consult with the United  
27 States environmental protection agency and their customers in  
28 developing reasonable reporting options.

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

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

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

36 (5) Based on the size guidelines in subsection (4) of this  
37 section, a building owner or operator, or their agent, of a  
38 nonresidential building shall disclose the United States  
39 environmental protection agency's energy star portfolio manager

1 benchmarking data and ratings to a prospective buyer, lessee, or  
2 lender for the most recent continuously occupied twelve-month period.  
3 A building owner or operator, or their agent, who delivers United  
4 States environmental protection agency's energy star portfolio  
5 manager benchmarking data and ratings to a prospective buyer, lessee,  
6 or lender is not required to provide additional information regarding  
7 energy consumption, and the information is deemed to be adequate to  
8 inform the prospective buyer, lessee, or lender regarding the United  
9 States environmental protection agency's energy star portfolio  
10 manager benchmarking data and ratings for the most recent twelve-  
11 month period for the building that is being sold, leased, financed,  
12 or refinanced.

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

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

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

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

36 NEW SECTION. Sec. 11. (1) The legislature finds that natural  
37 gas is a fossil fuel, the burning of which produces carbon dioxide  
38 pollution, and the production, distribution, and transmission of  
39 which results in the leakage of methane, an extremely potent

1 greenhouse gas. In 2014, the intergovernmental panel on climate  
2 change found that the global warming potential for methane gas is  
3 eighty-four times that of carbon dioxide over a twenty-year period  
4 and twenty-eight times that of carbon dioxide over a one hundred year  
5 period. Washington has adopted targets to reduce greenhouse gas  
6 emissions, in order to mitigate the impacts of climate change on the  
7 environment, economy, health, and livelihoods. Natural gas is used as  
8 a fuel in Washington to generate electricity, move vehicles and  
9 vessels, fuel industrial processes, and heat water and buildings.  
10 Under current policy, natural gas usage in Washington and associated  
11 greenhouse gas emissions have nearly doubled since 1990. Current  
12 state policy does not take recent scientific findings into account.

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

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 80.28  
20 RCW to read as follows:

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

32 NEW SECTION. **Sec. 13.** (1) The legislature finds and declares  
33 that:

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

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

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

5 NEW SECTION. **Sec. 14.** A new section is added to chapter 80.28  
6 RCW to read as follows:

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

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

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

23 NEW SECTION. **Sec. 15.** (1) Each gas company must offer by tariff  
24 a voluntary renewable natural gas service available to all customers  
25 to replace any portion of the natural gas that would otherwise be  
26 provided by the gas company. The tariff may provide reasonable limits  
27 on participation based on the availability of renewable natural gas  
28 and may use environmental attributes of renewable natural gas  
29 combined with natural gas. The voluntary renewable natural gas  
30 service must include delivery to, or the retirement on behalf of, the  
31 customer of all environmental attributes associated with the  
32 renewable natural gas.

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

1        NEW SECTION.    **Sec. 16.**    A new section is added to chapter 80.28  
2    RCW to read as follows:

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

15       NEW SECTION.    **Sec. 17.**    A new section is added to chapter 80.28  
16    RCW to read as follows:

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

28       **Sec. 18.**    RCW 19.27A.015 and 1990 c 2 s 2 are each amended to  
29    read as follows:

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

1       **Sec. 19.** RCW 19.27A.020 and 2018 c 207 s 7 are each amended to  
2 read as follows:

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

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

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

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

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

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

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

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

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

38       (b) The state energy code for residential structures does not  
39 preempt a city, town, or county's energy code for residential  
40 structures which exceeds the requirements of the state energy code

1 and which was adopted by the city, town, or county prior to March 1,  
2 1990. Such cities, towns, or counties may (~~not~~) subsequently amend  
3 their energy code for residential structures to exceed the  
4 requirements adopted prior to March 1, 1990, provided that such an  
5 amendment conforms with the requirements of this section.

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

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

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

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

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

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

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

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

33 **Sec. 20.** RCW 19.27A.025 and 1991 c 122 s 3 are each amended to  
34 read as follows:

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

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

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

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

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

23 **Sec. 21.** RCW 19.27.540 and 2009 c 459 s 16 are each amended to  
24 read as follows:

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

30 (2)(a) Except as provided in (b) of this subsection, the rules  
31 adopted under this section must require electric vehicle charging  
32 capability at all new buildings that provide on-site parking. Where  
33 parking is provided, the greater of one parking space or ten percent  
34 of parking spaces, rounded to the next whole number, must be provided  
35 with wiring or raceway sized to accommodate 208/240 V 40-amp electric  
36 vehicle charging. Electrical rooms serving buildings with on-site  
37 parking must be sized to accommodate the potential for electrical  
38 equipment and distribution required to serve a minimum of fifty  
39 percent of the total parking spaces with 208/240 V 40-amp electric



1 vehicle charging. For accessible parking spaces, the greater of one  
2 parking space or ten percent of accessible parking spaces, rounded up  
3 to the next whole number, must be provided with electric vehicle  
4 charging infrastructure that may also serve adjacent parking spaces  
5 not designated as accessible parking.

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

--- END ---