
SECOND SUBSTITUTE SENATE BILL 5293

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (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 03/01/19.

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

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 (4) In order to obtain the data necessary to perform the review
28 in subsection (3) of this section, the joint legislative audit and
29 review committee may refer to the number of building owners receiving
30 an incentive payment from qualifying utilities taking the public
31 utility tax preference under section 8 of this act, the amount of the
32 incentive payment, and the energy use intensity reduction of the
33 buildings as a result of the incentive program, as reported by the
34 department of commerce.

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

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

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

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

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

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

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

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

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

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

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

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

3 The definitions in this section apply to RCW 19.27A.130 through
4 19.27A.190 and 19.27A.020 unless the context clearly requires
5 otherwise.

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

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

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

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

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

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

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

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

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

39 (8) "Energy service company" has the same meaning as in RCW
40 43.19.670.

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

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

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

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

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

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

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

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

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

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

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

36 (20) "Reporting public facility" means any of the following:
37 (a) A building or structure, or a group of buildings or
38 structures at a single site, owned by a qualifying public agency,
39 that exceed ten thousand square feet of conditioned space;

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

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

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

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

11 (22) "Building owner" has the same meaning as defined in section
12 2 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 NEW SECTION. **Sec. 11.** A new section is added to chapter 80.28
6 RCW to read as follows:

7 Each gas company must identify and acquire all conservation
8 measures that are available and cost-effective. Each company must
9 establish an acquisition target every two years and must demonstrate
10 that the target will result in the acquisition of all resources
11 identified as available and cost-effective. The cost-effectiveness
12 analysis required by this section must include the costs of
13 greenhouse gas emissions established in section 15 of this act. The
14 targets must be based on a conservation potential assessment prepared
15 by an independent third party. Conservation targets must be approved
16 by order by the commission. The initial conservation target must take
17 effect by 2022.

18 NEW SECTION. **Sec. 12.** (1) The legislature finds and declares
19 that:

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

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

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

29 NEW SECTION. **Sec. 13.** A new section is added to chapter 80.28
30 RCW to read as follows:

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

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

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

10 NEW SECTION. **Sec. 14.** (1) Each gas company must offer by tariff
11 a voluntary renewable natural gas service available to all customers
12 to replace any portion of the natural gas that would otherwise be
13 provided by the gas company. The tariff may provide reasonable limits
14 on participation based on the availability of renewable natural gas
15 and may use environmental attributes of renewable natural gas
16 combined with natural gas. The voluntary renewable natural gas
17 service must include delivery to, or the retirement on behalf of, the
18 customer of all environmental attributes associated with the
19 renewable natural gas.

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

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

26 For the purposes of section 11 of this act, the cost of
27 greenhouse gas emissions resulting from the use of natural gas,
28 including the effect of emissions occurring in the gathering,
29 transmission, and distribution of natural gas to the end user is
30 equal to the cost per metric ton of carbon dioxide emissions, using
31 the two and one-half percent discount rate, listed in table 2,
32 Technical Support Document: Technical update of the social cost of
33 carbon for regulatory impact analysis under Executive Order 12866,
34 published by the interagency working group on social cost of
35 greenhouse gases of the United States government, August 2016. The
36 commission must adjust the costs established in this section to
37 reflect the effect of inflation.

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

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

14 **Sec. 17.** RCW 19.27A.015 and 1990 c 2 s 2 are each amended to
15 read as follows:

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

23 **Sec. 18.** RCW 19.27A.025 and 1991 c 122 s 3 are each amended to
24 read as follows:

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

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

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

37 (2) In considering amendments to the state energy code for
38 nonresidential buildings, the state building code council shall

1 establish and consult with a technical advisory committee including
2 representatives of appropriate state agencies, local governments,
3 general contractors, building owners and managers, design
4 professionals, utilities, and other interested and affected parties.

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

14 **Sec. 19.** RCW 19.27.540 and 2009 c 459 s 16 are each amended to
15 read as follows:

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

21 (2)(a) Except as provided in (b) of this subsection, the rules
22 adopted under this section must require electric vehicle charging
23 capability at all new buildings that provide on-site parking. Where
24 parking is provided, the greater of one parking space or ten percent
25 of parking spaces, rounded to the next whole number, must be provided
26 with wiring or raceway sized to accommodate 208/240 V 40-amp or
27 equivalent electric vehicle charging. Electrical rooms serving
28 buildings with on-site parking must be sized to accommodate the
29 potential for electrical equipment and distribution required to serve
30 a minimum of fifty percent of the total parking spaces with 208/240 V
31 40-amp or equivalent electric vehicle charging. Load management
32 infrastructure may be used to adjust the size and capacity of the
33 required building electric service equipment and circuits on the
34 customer facilities, as well as electric utility owned
35 infrastructure, as allowed by applicable local and national
36 electrical code. For accessible parking spaces, the greater of one
37 parking space or ten percent of accessible parking spaces, rounded up
38 to the next whole number, must be provided with electric vehicle

1 charging infrastructure that may also serve adjacent parking spaces
2 not designated as accessible parking.

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

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