
HOUSE BILL 1840

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By Representatives Veloria, Barlean, Poulsen, Cooper, Tokuda, Linville, Morris, Wood, Ruderman, Simpson, Romero, Schual-Berke, Santos, Ogden, O'Brien and Miloscia

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1 AN ACT Relating to the restoration of investments in energy
2 conservation, renewable energy resources, and low-income energy
3 services; adding a new chapter to Title 80 RCW; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) The state of Washington is affected by national, regional, and
8 statewide changes that are transforming the nature of the electric
9 power industry;

10 (2) Washington has a long tradition of energy policies that support
11 energy efficiency and renewable energy development. These policies
12 have reduced air and water pollution and protected the environment,
13 stimulated economic development, made homes more comfortable, reduced
14 the energy burden of low-income households, reduced operating costs for
15 businesses, and made industries more competitive;

16 (3) The Washington state electricity system study, commissioned by
17 the 55th legislature through chapter 300, Laws of 1998, confirmed that
18 changes in the electric industry have had the unintended consequence of
19 shortening utility planning horizons and reducing incentives for

1 electric utilities to invest in energy conservation and renewable
2 energy resources;

3 (4) The study also found that there are significant energy
4 conservation resources that cost the same or less than the least costly
5 new electric generation options and that while some nonhydroelectric
6 renewable energy resources may not be cost-effective in the short term,
7 they provide significant environmental and energy system benefits to
8 warrant development;

9 (5) The study also found that investment in low-income energy
10 services is declining and unstable, although the percent of
11 Washington's population below the poverty level has increased and low-
12 income households pay a significantly higher percent of their incomes
13 for energy than nonlow-income households;

14 (6) The rise in natural gas prices increases the cost-effectiveness
15 of conservation investments in gas heated homes and raises the need for
16 low-income energy services for gas utility customers;

17 (7) Washington electric ratepayers will benefit from resource
18 planning and acquisition that hedges against future fuel price risk by
19 ensuring that utilities rely on a diverse portfolio of resources to
20 generate electricity;

21 (8) Fuel diversity benefits, environmental benefits, and economic
22 benefits from renewable energy resources accrue to the public at large,
23 and therefore all consumers and retail suppliers have an equal
24 obligation to support a minimum amount of these resources in the
25 state's electric resource portfolio;

26 (9) Washington's claim to the benefits of the federal Columbia
27 river power system is being challenged in congress. The state's
28 ability to preserve these benefits for the citizens of Washington
29 depends in part on demonstrating that we are managing the system wisely
30 and using its benefits efficiently;

31 (10) It is in the interest of Washington's economy and environment
32 to have a competitively neutral and nonbypassable investment standard
33 that will ensure delivery of cost-effective energy conservation and
34 provide low-income households with energy efficiency services; and

35 (11) It is in the interest of Washington's ratepayers to have a
36 performance standard that will diversify energy resources and secure
37 development of new nonhydroelectric renewable energy resources to:

1 (a) Provide a stable economic environment for the continued
2 productivity and advancement of renewable energy resources and
3 technologies;

4 (b) Secure their inherent public benefits while ensuring that
5 electricity from renewable energy resources is provided at a price
6 based on market competition among these resources; and

7 (c) Create a stable policy that will enable long-term financing and
8 contracts and therefore lower the costs of these renewable energy
9 resources for consumers.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Auditor" means the office of the state auditor.

13 (2) "Commission" means the Washington state utilities and
14 transportation commission.

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

23 (4) "Department" means the Washington state department of
24 community, trade, and economic development.

25 (5) "Direct service customer" means any end-user of electricity
26 that obtains electricity directly from the transmission grid and not
27 through a distribution utility, including those customers defined in
28 section 3(8) of the Pacific Northwest electric power planning and
29 conservation act, P.L. 96-501.

30 (6) "Distribution utility" means any investor-owned or consumer-
31 owned utility that owns, operates, or manages any distribution plant
32 for hire within this state.

33 (7) "Eligible renewable energy resource" means electricity
34 generation facilities or fuel cells fueled by: (a) Wind; (b) solar
35 energy; (c) geothermal energy; (d) methane gas from landfills, sewage
36 treatment plants, or animal wastes; or (e) biomass energy based on
37 solid organic fuels from wood, forest, or field residues or dedicated
38 energy crops that does not include (i) wood pieces that have been

1 treated with chemical preservatives such as creosote,
2 pentachlorophenol, or copper chrome arsenic; (ii) municipal solid
3 waste; (iii) tires; (iv) construction and demolition debris; or (v)
4 waste byproducts of pulp and paper mills.

5 (8) "Governing body" means the board of directors, city council, or
6 the commissioners of any consumer-owned utility.

7 (9) "Investment standard" means a nonbypassable competitively
8 neutral charge on all end-use electricity customers and direct service
9 customers to fund investment in energy conservation, renewable energy
10 research and development, and low-income energy services.

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

15 (11) "Low income" means a household meeting the income eligibility
16 guidelines determined by the department.

17 (12) "Low-income energy assistance" means financial support
18 provided to low-income households for their energy bills in order to
19 make them affordable. Energy assistance may take the form of energy
20 education as well as special rates, cash assistance, percentage of
21 income or bill payment plans, or other similar mechanisms or charges.

22 (13) "Low-income energy efficiency services" includes energy-
23 related repairs, weatherization, health and safety measures,
24 installation of energy-efficient appliances and fixtures for low-income
25 residences, and investment in new construction of low-income households
26 that exceed the state energy code, as well as energy education, for the
27 purpose of enhancing energy efficiency.

28 (14) "Low-income energy services" refers to the combination of low-
29 income energy efficiency services and provision of low-income energy
30 assistance.

31 (15) "Performance standard" means the percentage of electricity
32 generation sold to Washington consumers that must be derived from
33 eligible renewable energy resources under section 10 of this act.

34 (16) "Renewable energy credit" means a tradable certificate of
35 proof of one kilowatt-hour of electricity generated from an eligible
36 renewable energy resource.

37 (17) "Retail electricity supplier" means a seller of electricity to
38 Washington retail electric consumers and direct service industries
39 located in Washington for ultimate consumption.

1 (18) "Total annual revenues from the retail sale of electricity
2 services in the state" means the total amount of revenues spent each
3 year by Washington end-users for electricity services including
4 distribution, transmission, generation, ancillary services, metering
5 and billing, transition charges, and other types of costs included in
6 consumer-owned utility or investor-owned utility electric rates on the
7 effective date of this section.

8 (19) "Total annual revenues from the retail sale of natural gas
9 services in the state" means the total amount of revenues spent each
10 year by Washington end-users for natural gas services including
11 distribution, ancillary services, metering and billing, transition
12 charges, and other types of costs included in consumer-owned utility or
13 investor-owned utility natural gas rates on the effective date of this
14 section.

15 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2002, and each year
16 from July 1st to June 30th thereafter, a minimum annual statewide
17 energy conservation, renewable energy research and development, and
18 low-income energy services investment standard for investor-owned
19 utilities, consumer-owned utilities, and direct service customers is
20 established equal to at least three percent of the total annual
21 revenues from the retail sale of electricity services in the state.

22 (2) Each Washington electricity distribution utility shall annually
23 allocate at least three percent of the total annual revenues from the
24 retail sale of electricity to consumers within its distribution service
25 territory toward meeting this standard. Nothing in this chapter limits
26 distribution utilities from exceeding this standard.

27 (3) Each direct service customer shall annually allocate at least
28 three percent of its total expenditures for electric services toward
29 meeting this standard. Nothing in this chapter limits direct service
30 customers from exceeding this standard.

31 NEW SECTION. **Sec. 4.** (1) The appropriate nonbypassable collection
32 mechanism to comply with the electric investment standard and
33 allocation determination outlined in this chapter must be determined by
34 the commission for all distribution utilities under its jurisdiction.
35 The mechanism must be nonbypassable for all customers regardless of
36 energy supplier.

1 (2) All consumer-owned utilities will determine the appropriate
2 nonbypassable collection mechanism to comply with the electric
3 investment standard and allocation determination outlined in this
4 chapter. The mechanism must be nonbypassable for all customers
5 regardless of energy supplier.

6 (3) Any distribution utility that qualifies as a low density
7 discount customer with the Bonneville power administration may, at its
8 option, adopt a minimum standard less than the amount it is projected
9 to collect under section 3 of this act, except that in no case may such
10 a distribution utility spend less, on average, than one and one-half
11 percent of revenues during the first five years after the effective
12 date of this section.

13 (4) Each direct service customer shall annually forward to the
14 distribution utility in the service territory where the company is
15 located an amount equal to the amount specified in section 3(3) of this
16 act, less those funds qualifying under section 5(3) of this act. In
17 determining its total annual expenditures for retail electric services,
18 the direct service customer shall either rely on consumption and total
19 revenue data from the 1994 report "Generation and Sales Statistics from
20 the Bonneville Power Administration" or provide documentation to the
21 department showing expenditure data for the most recent annual period
22 ending June 30th. If a direct service customer chooses to provide
23 expenditure data to the department, from that time forward, the
24 customer may no longer rely on 1994 data. Documentation provided to
25 the department is considered proprietary information and is not subject
26 to chapter 42.17 RCW. The department may report such information only
27 in the aggregate for all direct service customers in the state.

28 NEW SECTION. **Sec. 5.** (1) Funds collected for the electric
29 investment standard must be allocated for the following purposes:

30 (a) Energy conservation measures, including but not limited to
31 local conservation and regional market transformation efforts;

32 (b) Research, development, and demonstration projects related to
33 energy efficiency and new nonhydroelectric renewable energy resources,
34 including local and regional renewable energy projects; and

35 (c) Low-income energy efficiency services.

36 (2) The funds collected by investor-owned utilities and consumer-
37 owned utilities under the minimum investment standard shall be expended
38 as follows:

1 (a) 49.5 percent of the funds must be invested in cost-effective
2 conservation, including local energy efficiency market transformation
3 activities;

4 (b) 14 percent of the funds must be invested in cost-effective
5 regional energy efficiency market transformation activities.
6 Distribution utilities contributing to the northwest energy efficiency
7 alliance through their Bonneville power administration rates will be
8 credited an equivalent amount;

9 (c) 14 percent of the funds must be forwarded to the department for
10 administering programs that provide low-income energy efficiency
11 services. These funds may be distributed through the statewide network
12 of weatherization assistance program providers for weatherization of
13 residences occupied by low-income households;

14 (d) 18 percent of the funds must be forwarded to the department for
15 administering programs that provide low-income energy assistance.
16 These funds may be distributed through the statewide network of low-
17 income assistance program providers or equivalent local government
18 entities for helping qualifying households pay their energy bills;

19 (e) Up to 4 percent of the funds may be devoted to research,
20 development, and demonstration of eligible renewable energy resources
21 and energy efficiency technologies; otherwise, these funds will be used
22 to capture additional cost-effective conservation; and

23 (f) .5 percent of the funds shall be forwarded to the department to
24 fund its responsibilities set forth in this section and sections 9 and
25 16 of this act.

26 (3)(a) Direct service customers and any end-use customer of a
27 distribution utility that uses large amounts of electricity (defined as
28 > 10 aMW per facility) may receive credit for up to 49.5 percent of the
29 minimum standard for the funds that it contributes to the distribution
30 utility for local installation of energy efficiency measures, if the
31 customer invests these funds in documented cost-effective conservation
32 investments made in the customer's facilities. This credit does not
33 include the customer's contribution to low-income energy efficiency
34 service costs. If an independent audit determines there is no
35 available conservation measure at the site that would have a simple
36 payback of one and one-half to ten years, the customer must receive the
37 full credit of 49.5 percent of the minimum standard.

38 (i) The department will confirm that energy savings from the
39 package of energy conservation measures implemented by a direct service

1 customer has a cost less than or equal to the customer's avoided costs
2 and each individual measure has simple payback greater than eighteen
3 months. Upon determination, a customer may apply for a credit for
4 those costs from the local distribution utility to which they send
5 their funds.

6 (ii) The distribution utility will confirm that energy savings from
7 the package of energy conservation measures implemented by an end-use
8 customer under (a) of this subsection has a cost less than or equal to
9 the customer's avoided costs and each individual measure has simple
10 payback greater than eighteen months. Upon determination, a customer
11 may receive a credit for those costs from its distribution utility.

12 (b) A direct service customer contributing to the northwest energy
13 efficiency alliance through its Bonneville power administration rates
14 is eligible for a credit for up to fourteen percent of the minimum
15 standard.

16 NEW SECTION. **Sec. 6.** (1) Beginning July 1, 2002, and each year
17 from July 1st to June 30th thereafter, a minimum annual statewide
18 energy conservation and low-income energy services investment standard
19 for investor-owned utilities and consumer-owned utilities is
20 established equal to at least two percent of the total annual revenues
21 from the retail sale of natural gas services in the state.

22 (2) Each Washington natural gas distribution utility that provides
23 gas services within two or more counties shall annually allocate at
24 least two percent of the total annual revenues from the retail sale of
25 natural gas to consumers within its distribution service territory
26 toward meeting this standard. Nothing in this chapter limits
27 distribution utilities from exceeding this standard.

28 NEW SECTION. **Sec. 7.** (1) The appropriate nonbypassable collection
29 mechanism to comply with the natural gas investment standard and
30 allocation determination outlined in this chapter must be determined by
31 the commission for all distribution utilities under its jurisdiction.
32 The mechanism must be nonbypassable for all customers regardless of
33 energy supplier.

34 (2) All consumer-owned utilities must determine the appropriate
35 nonbypassable collection mechanism to comply with the natural gas
36 investment standard and allocation determination outlined in this

1 chapter. The mechanism must be nonbypassable for all customers
2 regardless of energy supplier.

3 NEW SECTION. **Sec. 8.** (1) Funds collected for the natural gas
4 investment standard shall be allocated for the following purposes:

- 5 (a) Energy conservation measures, including but not limited to
6 local conservation and regional market transformation efforts; and
7 (b) Low-income energy services.

8 (2) The funds collected by investor-owned utilities and consumer-
9 owned utilities under the minimum natural gas investment standard must
10 be expended as follows:

11 (a) 48.5 percent of the funds must be invested in cost-effective
12 conservation, including local and regional energy efficiency market
13 transformation activities;

14 (b) 20 percent of the funds shall be forwarded to the department
15 for administering programs that provide low-income energy efficiency
16 services. These funds may be distributed through the statewide network
17 of weatherization assistance program providers for weatherization of
18 residences occupied by low-income households;

19 (c) 26 percent of the funds shall be forwarded to the department
20 for administering programs that provide low-income energy assistance.
21 These funds may be distributed through the statewide network of low-
22 income assistance program providers or equivalent local government
23 entity for helping qualifying households pay their energy bills;

24 (d) Up to 5 percent of the funds may be devoted to research,
25 development, and demonstration of energy efficient gas technologies;
26 otherwise, these funds will be used to capture additional cost-
27 effective conservation; and

28 (e) .5 percent of the funds shall be forwarded to the department to
29 fund its responsibilities set forth in this section and sections 9 and
30 16 of this act.

31 NEW SECTION. **Sec. 9.** (1) On or before October 1, 2003, and
32 annually thereafter, each investor-owned utility must demonstrate to
33 the commission compliance with the minimum annual electric investment
34 standard created in section 3 of this act and the minimum annual gas
35 investment standard created in section 6 of this act, as applicable,
36 for the annual period ending the previous June 30th.

1 (2) On or before October 1, 2003, and annually thereafter, each
2 consumer-owned utility must demonstrate to the auditor, or by
3 independent audit, compliance with the minimum annual electric
4 investment standard created in section 3 of this act and the minimum
5 annual gas investment standard created in section 6 of this act, as
6 applicable, for the annual period ending the previous June 30th.

7 (3) On or before October 1, 2003, and annually thereafter, each
8 direct service customer must demonstrate to the auditor, or by
9 independent audit, compliance with the minimum annual electric
10 investment standard created in section 3 of this act for the annual
11 period ending the previous June 30th.

12 (4) Consumer-owned distribution utilities may demonstrate their
13 compliance with the minimum electric investment standard "in the
14 aggregate" by participating in collaborative/consortia efforts with
15 other Washington consumer-owned distribution utilities.

16 (5) If the auditor or commission determines, within sixty days
17 after receipt of utility compliance filing, that a utility has failed
18 to collect funds to meet the applicable minimum investment standards
19 for the previous reporting period, the distribution utility must
20 immediately implement a tariff to collect a uniform nonbypassable
21 charge. The tariff must collect revenue equivalent to achieving the
22 minimum investment standards as if implemented according to section 3
23 of this act for electric utilities or section 6 of this act for natural
24 gas utilities.

25 (6) If by July 1, 2004, and annually thereafter, the auditor or
26 commission determines that a utility's compliance filing shows that
27 less than ninety percent of funds collected to meet the minimum
28 electric utility investment standard have been allocated for the
29 purposes described in section 5 of this act, and if the department has
30 allocated more than ninety percent of the total funds forwarded to the
31 department under section 5 of this act for administering programs that
32 provide low-income energy efficiency services, the unallocated utility
33 funds may be forwarded to the department for additional investment in
34 low-income energy efficiency programs. Otherwise, unallocated funds
35 must be carried over for expenditure by the utility in the following
36 year.

37 (7) If by July 1, 2004, and annually thereafter, the auditor or
38 commission determines that a utility's compliance filing shows that
39 less than ninety percent of funds collected to meet the minimum gas

1 utility investment standard have been allocated for the purposes
2 described in section 8 of this act, and if the department has allocated
3 more than ninety percent of the total funds forwarded to the department
4 under section 8 of this act for administering programs that provide
5 low-income energy efficiency services, the unallocated utility funds
6 may be forwarded to the department for additional investment in low-
7 income energy efficiency programs. Otherwise, unallocated funds must
8 be carried over for expenditure by the utility in the following year.

9 (8) An investor-owned distribution utility's expenses for the
10 conservation (excluding low-income energy efficiency services) portion
11 of the funds must be for cost-effective conservation (based on avoided
12 generation, transmission and distribution costs, and associated
13 environmental externality costs) and approved and verified by the
14 commission.

15 (9) A consumer-owned utility's expenses for the conservation
16 portion of the funds (excluding low-income energy efficiency services)
17 must be for cost-effective conservation (based on avoided generation,
18 transmission and distribution costs, and associated environmental
19 externality costs) and approved and verified by the governing body.

20 (10) The department must convene a group of stakeholders, including
21 the commission, to advise it concerning the development of criteria for
22 energy conservation, market transformation, low-income energy services,
23 program implementation guidelines that qualify toward the minimum
24 annual investment standards, and a dispute resolution process to
25 address distribution utility or direct service customer complaints on
26 findings of failure to comply with program implementation guidelines.
27 The department will consider all existing and appropriate criteria and
28 guidelines where applicable, and may rely on work of regional power
29 planning committees in determining criteria and guidelines. The
30 commission has the final authority to approve criteria and program
31 implementation guidelines for the investor-owned utilities. The
32 department must adopt rules for reporting energy conservation
33 expenditures and energy savings as applicable.

34 (11) In the event that a consumer-owned utility fails to satisfy
35 the program implementation guidelines developed in subsection (10) of
36 this section, the department must issue a warning to the noncomplying
37 utility and provide technical assistance to the utility to improve
38 program effectiveness. After two consecutive years of unacceptable
39 programs, the department must assume program responsibility and

1 distribute funds for the noncomplying utility in accordance with the
2 allocation formulas set forth in section 5 of this act for electric
3 utilities, or as set forth in section 8 of this act for gas utilities,
4 except that the funds to be used for conservation, excluding low-income
5 energy services, may, at the discretion of the department, be
6 competitively bid to an energy service provider, to an energy
7 conservation nonprofit organization, or to the noncomplying utility to
8 be spent on energy conservation projects in the noncomplying utility's
9 service territory until such time as the noncompliance is remedied.
10 During this period of interim administration, the department may not
11 make any commitments of greater than three years for the conservation
12 funding it is administering.

13 (12) In the event that an investor-owned utility fails to satisfy
14 the program implementation guidelines developed in subsection (10) of
15 this section, the commission must issue a warning to the noncomplying
16 utility and notify the department, which must provide technical
17 assistance to the utility to improve program effectiveness. After two
18 consecutive years of unacceptable programs, the department must assume
19 program responsibility and distribute funds for the noncomplying
20 utility in accordance with the allocation formulas set forth in section
21 5 of this act for electric utilities or section 8 of this act for gas
22 utilities, except that the funds to be used for conservation, excluding
23 low-income energy services, may, at the discretion of the department,
24 be competitively bid to an energy service provider, to an energy
25 conservation nonprofit organization, or to the noncomplying utility to
26 be spent on energy conservation projects in the noncomplying utility's
27 service territory until such time as the noncompliance is remedied.
28 During this period of interim administration, the department may not
29 make any commitments of greater than three years for the local
30 conservation funding it is administering.

31 NEW SECTION. **Sec. 10.** The renewable energy performance standard
32 consists of the following:

33 (1) The required annual percentage of each retail electricity
34 supplier's total kilowatt-hours sold to retail customers in Washington
35 from eligible renewable energy resources must equal five percent by
36 calendar year 2003, ten percent by 2005, increase by at least one
37 percent in each succeeding calendar year up to twenty percent by 2015,
38 and remain at twenty percent each year thereafter.

1 (2) In facilities that use multiple fuels, only the electricity
2 generated by an eligible renewable energy resource is eligible for
3 renewable energy credits unless the use of nonqualifying fuels is below
4 a minimum level established by the department.

5 (3) Full requirement customers, as defined by the Bonneville power
6 administration, are allowed to meet the standard by paying a higher
7 rate to the Bonneville power administration to purchase eligible
8 renewable energy resources or credits.

9 (4) Any distribution utility that qualifies as a low density
10 discount customer with the Bonneville power administration may, at its
11 option, meet the minimum standard through a capacity basis, as defined
12 by the department.

13 NEW SECTION. **Sec. 11.** The department must convene a group of
14 stakeholders, including the commission, by January 1, 2002, to advise
15 it on the development of criteria for renewable energy credits, program
16 implementation guidelines that qualify purchases toward the minimum
17 performance standard, rules for reporting renewable energy resource
18 purchases under Washington's fuel mix disclosure law, chapter 19.29A
19 RCW, and a dispute resolution process to address distribution utility
20 or direct service customer complaints on findings of failure to comply
21 with program implementation guidelines. The department must consider
22 all existing and appropriate criteria and guidelines where applicable,
23 and may rely on the work of regional power planning committees in
24 determining criteria and guidelines. The commission has the final
25 authority to approve criteria and program implementation guidelines for
26 the investor-owned utilities. The department or its duly authorized
27 agent shall:

28 (1) Inspect and register renewable energy credits, certify and
29 audit output, and verify transactions;

30 (2) Impose and collect a fee on renewable energy credit applicants
31 to cover the administrative costs of carrying out its duties and
32 purposes related to the renewable energy performance standard under
33 sections 10 through 16 of this act;

34 (3) Enforce this chapter, including the imposition of
35 administrative penalties; and

36 (4) Adopt rules to carry out the purposes of this chapter.

1 NEW SECTION. **Sec. 12.** (1) On or before March 30, 2004, and on or
2 before March 30th of each year thereafter, each retail electricity
3 supplier must submit to the department an application that contains
4 evidence of ownership of sufficient renewable energy credits to satisfy
5 the renewable energy performance standard for the previous calendar
6 year.

7 (2) A renewable energy credit that is not used to satisfy the
8 required annual percentage under section 10 of this act for the year in
9 which it was issued may be carried forward for use in following years.

10 (3) Each retail electricity supplier must include the required
11 annual percentage of eligible renewable energy resources under the
12 renewable energy performance standard for electricity products sold to
13 end-use Washington customers.

14 (4) In meeting the performance standard, a retail electricity
15 supplier may include renewable energy credits for which the
16 installation or operation of the renewable energy resource is required
17 under federal law but may not include credits for which the
18 installation or operation of the renewable energy resource is required
19 under the laws of another state even if the installation or operation
20 is also required under federal law.

21 NEW SECTION. **Sec. 13.** Renewable energy credits may be sold or
22 exchanged by the person to whom the credits are issued or by any other
23 person who acquires the credits. A sale or exchange of renewable
24 energy credits is not valid unless it is recorded with the department
25 within ninety days after the conclusion of the sale or exchange. The
26 renewable energy and other environmental attributes associated with an
27 eligible renewable energy kilowatt-hour may only be sold or transferred
28 through the renewable energy credit, and that credit is only eligible
29 to satisfy the required annual percentage requirement of section 10 of
30 this act one time.

31 NEW SECTION. **Sec. 14.** (1) In the event that a utility fails to
32 satisfy the program implementation guidelines developed in sections 10
33 through 13 of this act, the department must issue a warning to the
34 noncomplying utility and provide technical assistance to the utility to
35 improve program effectiveness. After two consecutive years of
36 unacceptable programs, the department must assume program
37 responsibility, assess the investment level required to meet the

1 requirement, and distribute funds from the noncomplying utility to a
2 qualified nonprofit organization investing in new eligible renewable
3 energy resources. The department may not find that the organization is
4 a qualifying organization unless the organization is exempt from
5 federal taxation under section 501(c)(3) of the internal revenue code.
6 During this period of interim administration, the department may not
7 make any commitments of greater than three years for the funding it is
8 administering.

9 (2) The department may impose an administrative penalty against a
10 retail electricity supplier for violating a provision of sections 10
11 through 13 of this act. The administrative penalty for failure to
12 produce and receive approval of the required number of renewable energy
13 credits is an amount equal to two times the estimated market value of
14 a renewable energy credit for each credit that a retail electricity
15 supplier fails to acquire and retire. A penalty imposed under this
16 section does not diminish the liability of a retail electricity
17 supplier for the same violation under any other applicable provision of
18 the law. The department or its designee must use all proceeds from
19 these payments to purchase the lowest cost renewable energy credits
20 available in the market.

21 NEW SECTION. **Sec. 15.** If the federal government enacts a
22 renewable energy requirement that establishes a lower percentage than
23 Washington's renewable energy performance standard for any given
24 calendar year, the incremental amount from Washington's renewable
25 energy performance standard for eligible resources as defined in
26 section 2 of this act must be added to the federal renewable energy
27 requirement. If the federal renewable energy requirement is the same
28 or higher than the Washington renewable energy performance standard in
29 any given calendar year for eligible resources as defined in section 2
30 of this act, then the department must include in its annual report to
31 the legislature under section 16 of this act a recommendation to modify
32 or phase out the state renewable performance standard when the federal
33 renewable energy requirement takes effect, provided that the
34 department, after a public process, determines that the state's goals
35 will be satisfied by the federal requirement and that investments made
36 to satisfy the state renewable energy performance standard will not be
37 placed in jeopardy.

1 NEW SECTION. **Sec. 16.** (1) On or before December 1, 2004, and
2 biennially thereafter, the department shall submit a report to the
3 legislature on the accomplishments of the investment and performance
4 standards created in this chapter, including unachieved cost-effective
5 conservation opportunities, and make recommendations for revisions to
6 the standards. The commission may initiate rule-making proceedings
7 based on the results of these reports to modify requirements imposed on
8 investor-owned utilities.

9 (2) On or before January 1, 2015, the department shall: (a) Review
10 and recommend continuation or modification of the minimum investment
11 standards based on an assessment of the effectiveness of the standards,
12 market conditions, and unachieved opportunities; and (b) review and
13 recommend modification of the minimum performance standard based on an
14 assessment of its effectiveness and market conditions.

15 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
16 constitute a new chapter in Title 80 RCW.

17 NEW SECTION. **Sec. 18.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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