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**SENATE BILL 5867**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Fairley, Finkbeiner, Jacobsen, Kohl-Welles, Fraser, Regala, Kline, Kastama, Winsley and Patterson

Read first time 02/06/2001. Referred to Committee on Environment, Energy & Water.

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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