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**SUBSTITUTE SENATE BILL 6177**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Environment, Energy & Water (originally sponsored by Senators Fraser, Morton, Brown, Winsley, Fairley, T. Sheldon, Finkbeiner, Franklin, Jacobsen, Spanel, Regala, Snyder, Prentice, Patterson, Hargrove, Constantine and Kohl-Welles)

READ FIRST TIME 4/17/01.

1 AN ACT Relating to the management of state energy supply and  
2 demand; amending RCW 74.38.070, 19.29A.040, 80.50.020, 80.50.060,  
3 80.50.030, 80.50.040, 80.50.090, 80.50.100, 44.39.010, 44.39.015,  
4 80.52.030, 39.35.010, 39.35.030, 39.35.050, 39.35A.020, 39.35C.010,  
5 39.35C.020, 43.19.668, 43.19.669, 43.19.670, 43.19.675, 43.19.680, and  
6 80.28.309; adding new sections to chapter 82.16 RCW; adding a new  
7 section to chapter 19.29A RCW; adding a new section to chapter 43.31  
8 RCW; adding a new section to chapter 80.50 RCW; adding a new section to  
9 chapter 82.04 RCW; adding a new section to chapter 82.12 RCW; adding a  
10 new section to chapter 82.32 RCW; adding a new section to chapter 80.52  
11 RCW; adding a new section to chapter 82.34 RCW; adding a new section to  
12 chapter 39.35A RCW; adding a new section to chapter 39.35C RCW;  
13 creating new sections; providing an expiration date; and declaring an  
14 emergency.

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

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

17 (a) A sufficient, reliable, and affordable supply of energy is  
18 critically important to the health and welfare of the citizens of the  
19 state and to the prosperity of the state and region;

1 (b) The state is experiencing dramatic increases in the costs of  
2 electricity and natural gas as a result of many factors out of the  
3 state's direct control, and these unprecedented price increases have a  
4 disproportionate impact on the low-income citizens of the state;

5 (c) It remains in the state's best interests to encourage private  
6 investment in renewable energy resources and to reduce the reliance on  
7 a limited number of the energy resources used in this state;

8 (d) Energy generation and distribution systems and technologies  
9 have changed greatly since the original enactment of the state's energy  
10 facility siting laws thirty years ago. Experience during this time has  
11 demonstrated that a state council with the primary responsibility for  
12 energy facility siting approval is warranted, but that its procedures  
13 and authorities can be improved to enhance energy supplies;

14 (e) Existing legislative oversight of the state's response to  
15 energy shortages is in need of updating since the original creation of  
16 the joint legislative committee on energy and utilities after the last  
17 energy crisis; and

18 (f) The current energy situation requires that the state undertake  
19 economic and policy decisions to effectuate both short-term and long-  
20 term solutions that will assist individual consumers as well as  
21 commercial and industrial customers of electricity while protecting the  
22 environment.

23 (2) The legislature intends this act to:

24 (a) Help mitigate the adverse consequences of recent utility rate  
25 increases on Washington's low-income citizens by creating incentives  
26 for gas and electric utilities to adopt billing discounts and to make  
27 contributions to low-income energy assistance programs;

28 (b) Provide electricity consumers the opportunity to exercise their  
29 market power by choosing to purchase power from alternative energy  
30 resources including renewable resources, and to reward businesses and  
31 utilities that become "EnergySmart";

32 (c) Modify the statutory procedures and authorities of the energy  
33 facility siting evaluation council to encourage generators to operate  
34 their facilities to their fullest capacity;

35 (d) Modify the name and statutory procedures of the joint  
36 legislative committee tasked with providing oversight in times of  
37 energy shortages;

- 1 (e) Offer limited tax incentives to direct service industrial  
2 customers to develop alternative sources of electricity and relieve the  
3 burden their demand places on the Bonneville power administration; and  
4 (f) Remove unnecessary barriers to the development of new, cost-  
5 based electricity generation resources by public agencies.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.16 RCW  
7 to read as follows:

8 (1) Unless the context clearly requires otherwise, the definitions  
9 in this subsection apply throughout this section.

10 (a) "Base credit" means the maximum amount of credit against the  
11 tax imposed by this chapter that each light and power business or gas  
12 distribution business may take each fiscal year as calculated by the  
13 department. The base credit is equal to the proportionate share that  
14 the total grants received by each light and power business or gas  
15 distribution business in the prior fiscal year bears to the total  
16 grants received by all light and power businesses and gas distribution  
17 businesses in the prior fiscal year multiplied by the fiscal cap in  
18 place for the year in which credit is sought.

19 (b) "Billing discount" means a reduction in the amount charged for  
20 providing service to qualifying persons in Washington made by a light  
21 and power business or a gas distribution business. Billing discount  
22 does not include grants received by the light and power business or a  
23 gas distribution business.

24 (c) "Fiscal cap" means the total amount of credit, statewide, that  
25 may be taken in any fiscal year.

26 (d) "Grant" means funds provided to a light and power business or  
27 gas distribution business by the department of community, trade, and  
28 economic development or by a qualifying organization.

29 (e) "Low-income home energy assistance program" means energy  
30 assistance programs for low-income households as defined on December  
31 31, 2000, in the low-income home energy assistance act of 1981 as  
32 amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

33 (f) "Qualifying person" means a Washington resident who applies for  
34 assistance and qualifies for a grant regardless of whether that person  
35 receives a grant.

36 (g) "Qualifying contribution" means money given by a light and  
37 power business or a gas distribution business to a qualifying

1 organization, exclusive of money received in the prior fiscal year from  
2 its customers for the purpose of assisting other customers.

3 (h) "Qualifying organization" means an entity that has a  
4 contractual agreement with the department of community, trade, and  
5 economic development to administer in a specified service area low-  
6 income home energy assistance funds received from the federal  
7 government and such other funds that may be received by the entity.

8 (2) Subject to the limitations in this section, a light and power  
9 business or a gas distribution business may take a credit each fiscal  
10 year against the tax imposed under this chapter for qualifying  
11 contributions that are greater than one hundred twenty-five percent of  
12 the qualifying contributions given in fiscal year 2000 and for billing  
13 discounts that are greater than one hundred twenty-five percent of the  
14 billing discounts given in fiscal year 2000. If no billing discounts  
15 were given in fiscal year 2000 a credit shall be allowed on any billing  
16 discounts given in any subsequent fiscal year. Thereafter, credit  
17 shall be allowed on billing discounts given that are greater than one  
18 hundred twenty-five percent of the billing discounts given in the first  
19 fiscal year such billing discounts are given. The amount of credit  
20 shall be fifty percent of the total billing discounts and qualifying  
21 contributions, limited to the base credit for the same fiscal year.

22 (3) The fiscal cap shall not exceed one million five hundred  
23 thousand dollars in fiscal year 2002, two million five hundred thousand  
24 dollars in fiscal year 2003, three million five hundred thousand  
25 dollars in fiscal year 2004, and four million dollars in each fiscal  
26 year thereafter. By May 1st of each year starting in 2002, the  
27 department of community, trade, and economic development shall notify  
28 the department of revenue in writing of the grants received in the  
29 current fiscal year by each light and power business and gas  
30 distribution business.

31 (4)(a) Not later than June 1st of each year beginning in 2002, the  
32 department shall publish the base credit for each light and power  
33 business and gas distribution business for the next fiscal year.

34 (b) Not later than July 1st of each year beginning in 2002,  
35 application for credit must be made to the department including but not  
36 limited to the following information: Billing discounts given by the  
37 applicant in fiscal year 2000; qualifying contributions given by the  
38 applicant in the prior fiscal year; the amount of money received in the  
39 prior fiscal year from customers for the purpose of assisting other

1 customers; the base credit for the next fiscal year for the applicant;  
2 the qualifying contributions anticipated to be given in the next fiscal  
3 year; and billing discounts anticipated to be given in the next fiscal  
4 year. No credit under this section will be allowed to a light and  
5 power business or gas distribution business that does not file the  
6 application by July 1st.

7 (c) Not later than August 1st of each year beginning in 2002, the  
8 department shall notify each applicant of the amount of credit that may  
9 be taken in that fiscal year.

10 (d) The balance of base credits not used by other light and power  
11 businesses and gas distribution businesses shall be ratably distributed  
12 to applicants under the formula in subsection (1)(a) of this section.  
13 The total amount of credit that may be taken by an applicant is the  
14 base credit plus any ratable portion of unused base credit.

15 (5) The credit taken under this section is limited to the amount of  
16 tax imposed under this chapter for the fiscal year. The credit must be  
17 claimed in the fiscal year in which the billing reduction is made. Any  
18 unused credit expires. Refunds shall not be given in place of credits.

19 (6) No credit may be taken for billing discounts made before July  
20 1, 2001. Within two weeks of the effective date of this section, the  
21 department of community, trade, and economic development shall notify  
22 the department of revenue in writing of the grants received in fiscal  
23 year 2001 by each light and power business and gas distribution  
24 business. Within four weeks of the effective date of this section, the  
25 department of revenue shall publish the base credit for each light and  
26 power business and gas distribution business for fiscal year 2002.  
27 Within eight weeks of the effective date of this section, application  
28 to the department must be made showing the information required in  
29 subsection (4)(b) of this section. Within twelve weeks of the  
30 effective date of this section, the department shall notify each  
31 applicant of the amount of credit that may be taken in fiscal year  
32 2002.

33 **Sec. 3.** RCW 74.38.070 and 1998 c 300 s 8 are each amended to read  
34 as follows:

35 (1) Notwithstanding any other provision of law, any county, city,  
36 town, municipal corporation, or quasi municipal corporation providing  
37 utility services may provide such services at reduced rates for low  
38 income senior citizens or other low-income citizens: PROVIDED, That,

1 for the purposes of this section, "low-income senior citizen" or "other  
2 low-income citizen" shall be defined by appropriate ordinance or  
3 resolution adopted by the governing body of the county, city, town,  
4 municipal corporation, or quasi municipal corporation providing the  
5 utility services except as provided in subsection (2) of this section.  
6 Any reduction in rates granted in whatever manner to low-income senior  
7 citizens or other low-income citizens in one part of a service area  
8 shall be uniformly extended to low-income senior citizens or other low-  
9 income citizens in all other parts of the service area.

10 (2) For purposes of implementing this section by any public utility  
11 district, (a) "low-income senior citizen" means a person who is sixty-  
12 two years of age or older and whose total income, including that of his  
13 or her spouse or cotenant, does not exceed the amount specified in RCW  
14 84.36.381(5)(b), (~~as now or hereafter amended~~) and (b) "other low-  
15 income citizen" means a person within the defined group established by  
16 appropriate ordinance or resolution as provided in subsection (1) of  
17 this section whose household income does not exceed the amount  
18 specified in RCW 70.164.020(4).

19 NEW SECTION. Sec. 4. A new section is added to chapter 19.29A RCW  
20 to read as follows:

21 (1) Beginning January 1, 2002, each electric utility must provide  
22 to its retail electricity customers a voluntary option to purchase  
23 qualified renewable energy resources in accordance with this section.

24 (2) Each electric utility must include with its retail electric  
25 customer's regular billing statements, at least quarterly, a voluntary  
26 option to purchase qualified renewable energy resources. The option  
27 may allow customers to purchase qualified renewable energy resources at  
28 fixed or variable rates and for fixed or variable periods of time,  
29 including but not limited to monthly, quarterly, or annual purchase  
30 agreements. A utility may provide qualified renewable energy resource  
31 options through either: (a) Resources it owns or contracts for; or (b)  
32 the purchase of credits issued by a clearinghouse or other system by  
33 which the utility may secure, for trade or other consideration,  
34 verifiable evidence that a second party has a qualified renewable  
35 energy resource and that the second party agrees to transfer such  
36 evidence exclusively to the benefit of the utility.

37 (3) For the purposes of this section, a "qualified renewable energy  
38 resource" means the electricity produced from generation facilities

1 that are fueled by: (a) Wind; (b) solar energy; (c) geothermal energy;  
2 (d) landfill gas; (e) wave or tidal action; (f) gas produced during the  
3 treatment of wastewater; (g) environmentally qualified hydropower; (h)  
4 fuel cells; or (i) biomass energy based on solid organic fuels from  
5 wood, forest, or field residues, or dedicated energy crops that do not  
6 include wood pieces that have been treated with chemical preservatives  
7 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

8 (4) For the purposes of this section, "environmentally qualified  
9 hydropower" means the energy produced either: (a) As a result of  
10 modernizations or upgrades made after June 1, 1998, to hydropower  
11 facilities operating on the effective date of this section that have  
12 been demonstrated to reduce the mortality of anadromous fish; or (b) by  
13 run of the river or run of the canal hydropower facilities that are not  
14 responsible for obstructing the passage of anadromous fish.

15 (5) The rates, terms, conditions, and customer notification of each  
16 utility's option or options offered in accordance with this section  
17 must be approved by the governing body of the consumer-owned utility or  
18 by the commission for investor-owned utilities. All costs and benefits  
19 associated with any option offered by an electric utility under this  
20 section must be allocated to the customers who voluntarily choose that  
21 option and may not be shifted to any customers who have not chosen such  
22 option.

23 (6) Each consumer-owned utility must report annually to the  
24 department and each investor-owned utility must report annually to the  
25 commission beginning October 1, 2002, until October 1, 2012, describing  
26 the option or options it is offering its customers under the  
27 requirements of this section, the rate of customer participation, the  
28 amount of qualified renewable energy resources purchased by customers,  
29 and the amount of utility investments in qualified renewable energy  
30 resources. The department and the commission together shall report  
31 annually to the legislature, beginning December 1, 2002, until December  
32 1, 2012, with the results of the utility reports.

33 **Sec. 5.** RCW 19.29A.040 and 1998 c 300 s 6 are each amended to read  
34 as follows:

35 The provisions of RCW 19.29A.020, 19.29A.030, ~~((and))~~ section 5,  
36 chapter 300, Laws of 1998, and section 4 of this act do not apply to a  
37 small utility. However, nothing in this section prohibits the  
38 governing body of a small utility from determining the utility should

1 comply with any or all of the provisions of RCW 19.29A.020, 19.29A.030,  
2 ((and)) section 5, chapter 300, Laws of 1998, and section 4 of this  
3 act, which governing bodies are encouraged to do.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.31 RCW  
5 to read as follows:

6 (1) By December 15, 2001, the department of community, trade, and  
7 economic development must establish the EnergySmart Washington program.  
8 The purpose of the program is to give annual public recognition and  
9 awards to individuals, businesses, utilities, government agencies, and  
10 other institutions that provide leading examples of efficient use of  
11 energy or that have made notable contributions to the development,  
12 promotion, and deployment of energy efficiency. The program will  
13 provide similar recognition for entities that demonstrate similar  
14 achievements with regard to qualified renewable energy resources.

15 (2) In addition, the program will provide for annual awards of  
16 certificates of achievement to utilities that develop a portfolio of  
17 diverse energy resources, including but not limited to qualified  
18 renewable energy resources. The purpose of awarding certificates of  
19 achievement is to create an incentive for utilities to act in  
20 accordance with state policy favoring a diversity of energy resources  
21 and to recognize such achievement as a matter of environmental  
22 distinction. A utility that receives a certificate of achievement may  
23 publicize the certificate in its advertising, disclosures under chapter  
24 19.29A RCW, and other means of publicity and advertising.

25 (3) For the purposes of this section, a "qualified renewable energy  
26 resource" has the same meaning as that term is defined in section 4 of  
27 this act.

28 **Sec. 7.** RCW 80.50.020 and 1995 c 69 s 1 are each amended to read  
29 as follows:

30 The definitions in this section apply throughout this chapter  
31 unless the context clearly requires otherwise.

32 (1) "Applicant" means any person who makes application for a site  
33 certification pursuant to the provisions of this chapter((?)).

34 (2) "Application" means any request for approval of a particular  
35 site or sites filed in accordance with the procedures established  
36 pursuant to this chapter, unless the context otherwise requires((?)).



1 (3) "Person" means an individual, partnership, joint venture,  
2 private or public corporation, association, firm, public service  
3 company, political subdivision, municipal corporation, government  
4 agency, public utility district, or any other entity, public or  
5 private, however organized((+)).

6 (4) "Site" means any proposed or approved location of an energy  
7 facility((+)).

8 (5) "Certification" means a binding agreement between an applicant  
9 and the state which shall embody compliance to the siting guidelines,  
10 in effect as of the date of certification, which have been adopted  
11 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to  
12 be met prior to or concurrent with the construction or operation of any  
13 energy facility((+)).

14 (6) "Associated facilities" means storage, transmission, handling,  
15 or other related and supporting facilities connecting an energy plant  
16 with the existing energy supply, processing, or distribution system,  
17 including, but not limited to, communications, controls, mobilizing or  
18 maintenance equipment, instrumentation, and other types of ancillary  
19 transmission equipment, off-line storage or venting required for  
20 efficient operation or safety of the transmission system and overhead,  
21 and surface or subsurface lines of physical access for the inspection,  
22 maintenance, and safe operations of the transmission facility and new  
23 transmission lines constructed to operate at nominal voltages in excess  
24 of 200,000 volts to connect a thermal power plant to the northwest  
25 power grid: PROVIDED, That common carrier railroads or motor vehicles  
26 shall not be included((+)).

27 (7) "Transmission facility" means any of the following together  
28 with their associated facilities:

29 (a) Crude or refined petroleum or liquid petroleum product  
30 transmission pipeline of the following dimensions: A pipeline larger  
31 than six inches minimum inside diameter between valves for the  
32 transmission of these products with a total length of at least fifteen  
33 miles;

34 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas  
35 transmission pipeline of the following dimensions: A pipeline larger  
36 than fourteen inches minimum inside diameter between valves, for the  
37 transmission of these products, with a total length of at least fifteen  
38 miles for the purpose of delivering gas to a distribution facility,

1 except an interstate natural gas pipeline regulated by the United  
2 States federal power commission((?)).

3 (8) "Independent consultants" means those persons who have no  
4 financial interest in the applicant's proposals and who are retained by  
5 the council to evaluate the applicant's proposals, supporting studies,  
6 or to conduct additional studies((?)).

7 (9) "Thermal power plant" means, for the purpose of certification,  
8 any electrical generating facility using any fuel, including nuclear  
9 materials, for distribution of electricity by electric utilities((?)).

10 (10) "Energy facility" means an energy plant or transmission  
11 facilities: PROVIDED, That the following are excluded from the  
12 provisions of this chapter:

13 (a) Facilities for the extraction, conversion, transmission or  
14 storage of water, other than water specifically consumed or discharged  
15 by energy production or conversion for energy purposes; and

16 (b) Facilities operated by and for the armed services for military  
17 purposes or by other federal authority for the national defense((?)).

18 (11) "Council" means the energy facility site evaluation council  
19 created by RCW 80.50.030((?)).

20 (12) "Counsel for the environment" means an assistant attorney  
21 general or a special assistant attorney general who shall represent the  
22 public in accordance with RCW 80.50.080((?)).

23 (13) "Construction" means on-site improvements, excluding  
24 exploratory work, which cost in excess of two hundred fifty thousand  
25 dollars((?)).

26 (14) "Energy plant" means the following facilities together with  
27 their associated facilities:

28 (a) Any stationary thermal power plant with generating capacity of  
29 ((two)) three hundred fifty thousand kilowatts or more, measured using  
30 maximum continuous electric generating capacity, less minimum auxiliary  
31 load, at average ambient temperature and pressure, and floating thermal  
32 power plants of ((fifty)) one hundred thousand kilowatts or more,  
33 including associated facilities. For the purposes of this subsection,  
34 "floating thermal power plants" means a thermal power plant that is  
35 suspended on the surface of water by means of a barge, vessel, or other  
36 floating platform;

37 (b) Facilities which will have the capacity to receive liquified  
38 natural gas in the equivalent of more than one hundred million standard

1 cubic feet of natural gas per day, which has been transported over  
2 marine waters;

3 (c) Facilities which will have the capacity to receive more than an  
4 average of fifty thousand barrels per day of crude or refined petroleum  
5 or liquified petroleum gas which has been or will be transported over  
6 marine waters, except that the provisions of this chapter shall not  
7 apply to storage facilities unless occasioned by such new facility  
8 construction;

9 (d) Any underground reservoir for receipt and storage of natural  
10 gas as defined in RCW 80.40.010 capable of delivering an average of  
11 more than one hundred million standard cubic feet of natural gas per  
12 day; and

13 (e) Facilities capable of processing more than twenty-five thousand  
14 barrels per day of petroleum into refined products((+)).

15 (15) "Land use plan" means a comprehensive plan or land use element  
16 thereof adopted by a unit of local government pursuant to chapters  
17 35.63, 35A.63, or 36.70 RCW((+)).

18 (16) "Zoning ordinance" means an ordinance of a unit of local  
19 government regulating the use of land and adopted pursuant to chapters  
20 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

21 (17) "Renewable resource" means: (a) Wind; (b) solar energy; (c)  
22 geothermal energy; (d) landfill gas; (e) run of the river or run of the  
23 canal hydropower facilities that are not responsible for obstructing  
24 the passage of anadromous fish; or (f) biomass energy based on solid  
25 organic fuels from wood, forest, or field residues, or dedicated energy  
26 crops that do not include wood pieces that have been treated with  
27 chemical preservatives such as creosote, pentachlorophenol, or copper-  
28 chrome-arsenic.

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.50 RCW  
30 to read as follows:

31 The council shall actively seek to implement the intent of this  
32 chapter as set forth in RCW 80.50.010 by diligently and expeditiously  
33 evaluating the sites for energy facilities to meet present and emerging  
34 energy supply needs.

35 **Sec. 9.** RCW 80.50.060 and 1977 ex.s. c 371 s 5 are each amended to  
36 read as follows:

1 (1) The provisions of this chapter shall apply to the construction  
2 of energy facilities which includes the new construction of energy  
3 facilities and the reconstruction or enlargement of existing energy  
4 facilities where the net increase in physical capacity or dimensions  
5 resulting from such reconstruction or enlargement meets or exceeds  
6 those capacities or dimensions set forth in RCW 80.50.020 (7) and  
7 ~~((+17))~~ (14), as now or hereafter amended. No construction of such  
8 energy facilities may be undertaken, except as otherwise provided in  
9 this chapter, after July 15, 1977, without first obtaining  
10 certification in the manner provided in this chapter.

11 (2) The provisions of this chapter apply to the construction,  
12 reconstruction, or enlargement of a new or existing energy facility  
13 that exclusively uses renewable resources and chooses to receive  
14 certification under this chapter, regardless of the generating capacity  
15 of the project.

16 (3) The provisions of this chapter shall not apply to normal  
17 maintenance and repairs which do not increase the capacity or  
18 dimensions beyond those set forth in RCW 80.50.020 (7) and ~~((+17))~~  
19 (14), as now or hereafter amended.

20 ~~((+3))~~ (4) Applications for certification of energy facilities  
21 made prior to July 15, 1977, shall continue to be governed by the  
22 applicable provisions of law in effect on the day immediately preceding  
23 July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which  
24 shall apply to such prior applications and to site certifications  
25 prospectively from July 15, 1977.

26 ~~((+4))~~ (5) Applications for certification shall be upon forms  
27 prescribed by the council and shall be supported by such information  
28 and technical studies as the council may require.

29 **Sec. 10.** RCW 80.50.030 and 1996 c 186 s 108 are each amended to  
30 read as follows:

31 (1) There is created and established the energy facility site  
32 evaluation council.

33 (2)(a) The ~~((chairman))~~ chair of the council shall be appointed by  
34 the governor with the advice and consent of the senate, shall have a  
35 vote on matters before the council, shall serve for a term coextensive  
36 with the term of the governor, and is removable for cause. The  
37 ~~((chairman))~~ chair may designate a member of the council to serve as  
38 acting ~~((chairman))~~ chair in the event of the ~~((chairman's))~~ chair's

1 absence. The (~~chairman~~) chair is a "state employee" for the purposes  
2 of chapter 42.52 RCW and shall receive a salary as determined under RCW  
3 43.03.040. As applicable, when attending meetings of the council,  
4 members may receive reimbursement for travel expenses in accordance  
5 with RCW 43.03.050 and 43.03.060, and are eligible for compensation  
6 under RCW 43.03.250.

7 (b) The (~~chairman~~) chair or a designee shall execute all official  
8 documents, contracts, and other materials on behalf of the council.  
9 The Washington state department of community, trade, and economic  
10 development shall provide all administrative and staff support for the  
11 council. The director of the department of community, trade, and  
12 economic development has supervisory authority over the staff of the  
13 council and shall employ such personnel as are necessary to implement  
14 this chapter. Not more than three such employees may be exempt from  
15 chapter 41.06 RCW.

16 (3) The council shall consist of the directors, administrators, or  
17 their designees, of the following departments, agencies, commissions,  
18 and committees or their statutory successors:

19 (a) Department of ecology;

20 (b) Department of fish and wildlife;

21 (~~(c) Department of health;~~

22 ~~(d) Military department;~~

23 ~~(e))~~ Department of community, trade, and economic development;

24 (~~((f))~~) (d) Utilities and transportation commission; and

25 (~~((g))~~) (e) Department of natural resources(~~(i~~

26 ~~(h) Department of agriculture;~~

27 ~~(i) Department of transportation))~~.

28 (4) The directors, administrators, or their designees, of the  
29 following departments or their statutory successors, may participate as  
30 councilmembers at their own discretion provided they elect to  
31 participate no later than sixty days after an application is filed:

32 (a) Department of agriculture;

33 (b) Department of transportation;

34 (c) Military department; and

35 (d) Department of health.

36 (5) The appropriate county legislative authority of every county  
37 wherein an application for a proposed site is filed shall appoint a  
38 member or designee as a voting member to the council. The member or  
39 designee so appointed shall sit with the council only at such times as

1 the council considers the proposed site for the county which he or she  
2 represents, and such member or designee shall serve until there has  
3 been a final acceptance or rejection of the proposed site.

4 ~~((+5+))~~ (6) The city legislative authority of every city within  
5 whose corporate limits an energy plant is proposed to be located shall  
6 appoint a member or designee as a voting member to the council. The  
7 member or designee so appointed shall sit with the council only at such  
8 times as the council considers the proposed site for the city which he  
9 or she represents, and such member or designee shall serve until there  
10 has been a final acceptance or rejection of the proposed site.

11 ~~((+6+))~~ (7) For any port district wherein an application for a  
12 proposed port facility is filed subject to this chapter, the port  
13 district shall appoint a member or designee as a nonvoting member to  
14 the council. The member or designee so appointed shall sit with the  
15 council only at such times as the council considers the proposed site  
16 for the port district which he or she represents, and such member or  
17 designee shall serve until there has been a final acceptance or  
18 rejection of the proposed site. The provisions of this subsection  
19 shall not apply if the port district is the applicant, either singly or  
20 in partnership or association with any other person.

21 **Sec. 11.** RCW 80.50.040 and 1990 c 12 s 4 are each amended to read  
22 as follows:

23 The council shall have the following powers:

24 (1) To adopt, promulgate, amend, or rescind suitable rules and  
25 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions  
26 of this chapter, and the policies and practices of the council in  
27 connection therewith;

28 (2) To develop and apply environmental and ecological guidelines in  
29 relation to the type, design, location, construction, and operational  
30 conditions of certification of energy facilities subject to this  
31 chapter;

32 (3) To establish rules of practice for the conduct of public  
33 hearings pursuant to the provisions of the Administrative Procedure  
34 Act, as found in chapter 34.05 RCW;

35 (4) To prescribe the form, content, and necessary supporting  
36 documentation for site certification;

37 (5) To receive applications for energy facility locations and to  
38 investigate the sufficiency thereof;

1 (6) To make and contract, when applicable, for independent studies  
2 of sites proposed by the applicant;

3 (7) To conduct hearings on the proposed location of the energy  
4 facilities;

5 (8) To prepare written reports to the governor which shall include:  
6 (a) A statement indicating whether the application is in compliance  
7 with the council's guidelines, (b) criteria specific to the site and  
8 transmission line routing, (c) a council recommendation as to the  
9 disposition of the application, and (d) a draft certification agreement  
10 when the council recommends approval of the application;

11 (9) To prescribe the means for monitoring of the effects arising  
12 from the construction and the operation of energy facilities to assure  
13 continued compliance with terms of certification and/or permits issued  
14 by the council pursuant to chapter 90.48 RCW or subsection (12) of this  
15 section: PROVIDED, That any on-site inspection required by the council  
16 shall be performed by other state agencies pursuant to interagency  
17 agreement: PROVIDED FURTHER, That the council (~~shall~~) may retain  
18 authority for determining compliance relative to monitoring;

19 (10) To integrate its site evaluation activity with activities of  
20 federal agencies having jurisdiction in such matters to avoid  
21 unnecessary duplication;

22 (11) To present state concerns and interests to other states,  
23 regional organizations, and the federal government on the location,  
24 construction, and operation of any energy facility which may affect the  
25 environment, health, or safety of the citizens of the state of  
26 Washington;

27 (12) To issue permits in compliance with applicable provisions of  
28 the federally approved state implementation plan adopted in accordance  
29 with the Federal Clean Air Act, as now existing or hereafter amended,  
30 for the new construction, reconstruction, or enlargement or operation  
31 of energy facilities: PROVIDED, That such permits shall become  
32 effective only if the governor approves an application for  
33 certification and executes a certification agreement pursuant to this  
34 chapter: AND PROVIDED FURTHER, That all such permits be conditioned  
35 upon compliance with all provisions of the federally approved state  
36 implementation plan which apply to energy facilities covered within the  
37 provisions of this chapter; and

38 (13) To serve as an interagency coordinating body for energy-  
39 related issues.

1       **Sec. 12.** RCW 80.50.090 and 1989 c 175 s 173 are each amended to  
2 read as follows:

3       (1) The council shall conduct ((a)) an informational public hearing  
4 in the county of the proposed site (~~((within sixty days of))~~) as soon as  
5 practicable but not later than sixty days after receipt of an  
6 application for site certification: PROVIDED, That the place of such  
7 public hearing shall be as close as practical to the proposed site.

8       (2) Subsequent to the informational public hearing, the council  
9 ((must)) shall conduct a public hearing to determine (~~((at the initial~~  
10 ~~public hearing))~~) whether or not the proposed site is consistent and in  
11 compliance with county or regional land use plans or zoning ordinances.  
12 If it is determined that the proposed site does conform with existing  
13 land use plans or zoning ordinances in effect as of the date of the  
14 application, the county or regional planning authority shall not  
15 thereafter change such land use plans or zoning ordinances so as to  
16 affect the proposed site.

17       (3) Prior to the issuance of a council recommendation to the  
18 governor under RCW 80.50.100 a public hearing, conducted as an  
19 adjudicative proceeding under chapter 34.05 RCW, the Administrative  
20 Procedure Act, shall be held. At such public hearing any person shall  
21 be entitled to be heard in support of or in opposition to the  
22 application for certification.

23       (4) Additional public hearings shall be held as deemed appropriate  
24 by the council in the exercise of its functions under this chapter.

25       **Sec. 13.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
26 read as follows:

27       (1) The council shall report to the governor its recommendations as  
28 to the approval or rejection of an application for certification within  
29 twelve months of receipt by the council of such an application, or such  
30 later time as is mutually agreed by the council and the applicant.  
31 Pursuant to RCW 34.05.476, the council's report to the governor shall  
32 be based on the administrative record developed during the public  
33 hearing held under RCW 80.50.090(3), along with the environmental  
34 impact statement prepared under RCW 43.21C.030, and relevant  
35 information presented at other public hearings held by the council  
36 under this chapter. If the council recommends approval of an  
37 application for certification, it shall also submit a draft  
38 certification agreement with the report. The council shall include



1 conditions in the draft certification agreement to implement the  
2 provisions of this chapter, including, but not limited to, conditions  
3 to protect state or local governmental or community interests affected  
4 by the construction or operation of the energy facility, and conditions  
5 designed to recognize the purpose of laws or ordinances, or rules or  
6 regulations promulgated thereunder, that are preempted or superseded  
7 pursuant to RCW 80.50.110 as now or hereafter amended.

8 (2) Within sixty days of receipt of the council's report the  
9 governor shall take one of the following actions:

10 (a) Approve the application and execute the draft certification  
11 agreement; or

12 (b) Reject the application; or

13 (c) Direct the council to reconsider certain aspects of the draft  
14 certification agreement.

15 The council shall reconsider such aspects of the draft  
16 certification agreement by reviewing the existing record of the  
17 application or, as necessary, by reopening the adjudicative proceeding  
18 for the purposes of receiving additional evidence. Such  
19 reconsideration shall be conducted expeditiously. The council shall  
20 resubmit the draft certification to the governor incorporating any  
21 amendments deemed necessary upon reconsideration. Within sixty days of  
22 receipt of such draft certification agreement, the governor shall  
23 either approve the application and execute the certification agreement  
24 or reject the application. The certification agreement shall be  
25 binding upon execution by the governor and the applicant.

26 (3) The rejection of an application for certification by the  
27 governor shall be final as to that application but shall not preclude  
28 submission of a subsequent application for the same site on the basis  
29 of changed conditions or new information.

30 **Sec. 14.** RCW 44.39.010 and 1977 ex.s. c 328 s 13 are each amended  
31 to read as follows:

32 There is hereby created the joint committee on energy ((and  
33 utilities)) supply of the legislature of the state of Washington.

34 **Sec. 15.** RCW 44.39.015 and 1977 ex.s. c 328 s 14 are each amended  
35 to read as follows:

36 The committee shall consist of four senators and four  
37 representatives who shall be selected biennially as follows:

1 (1) The president of the senate shall ~~((nominate))~~ appoint four  
2 members from the ~~((energy and utilities))~~ senate to serve on the  
3 committee, including the ~~((chairman,))~~ chair of the committee  
4 responsible for energy issues. Two members ~~((being))~~ from each major  
5 political party~~((, to serve on the committee, and shall submit the list~~  
6 ~~of nominees to the senate for confirmation. Upon confirmation, the~~  
7 ~~senators shall be deemed installed as members))~~ must be appointed.

8 (2) The speaker or co-speakers of the house of representatives  
9 shall nominate four members from the ~~((energy and utilities))~~ house of  
10 representatives to serve on the committee, including the ~~((chairman,))~~  
11 chair or co-chairs of the committee responsible for energy issues. Two  
12 members ~~((being))~~ from each major political party~~((, to serve on the~~  
13 ~~committee, and shall submit the list of nominees to the house of~~  
14 ~~representatives for confirmation. Upon confirmation, the~~  
15 ~~representatives shall be deemed installed as members. The chairmen of~~  
16 ~~the senate and house energy and utilities committees shall alternately~~  
17 ~~serve as chairman for one year terms. The chairman of the house~~  
18 ~~committee shall serve as the initial chairman. The chairman may~~  
19 ~~designate another committee member to serve as chairman in his or her~~  
20 ~~absence))~~ must be appointed.

21 (3) The committee shall elect a chair and a vice-chair. The chair  
22 shall be a member of the house of representatives in even-numbered  
23 years and a member of the senate in odd-numbered years. In the case of  
24 a tie in the membership of the house of representatives in an even-  
25 numbered year, the committee shall elect co-chairs from the house of  
26 representatives in that year.

27 NEW SECTION. Sec. 16. A new section is added to chapter 82.04 RCW  
28 to read as follows:

29 (1) Unless the context clearly requires otherwise, the definitions  
30 in this subsection apply throughout this section.

31 (a) "Direct service industrial customer" means a person who is an  
32 industrial customer that contracts for the purchase of power from the  
33 Bonneville power administration for direct consumption as of the  
34 effective date of this section. "Direct service industrial customer"  
35 includes a person who is a subsidiary that is more than fifty percent  
36 owned by a direct service industrial customer and who receives power  
37 from the Bonneville power administration pursuant to the parent's  
38 contract for power.

1 (b) "Facility" means a gas turbine electrical generation facility  
2 that does not exist on the effective date of this section and is owned  
3 by a direct service industrial customer for the purpose of producing  
4 electricity to be consumed by the direct service industrial customer.

5 (c) "Average annual employment" means the total employment in this  
6 state for a calendar year at the direct service industrial customer's  
7 location where electricity from the facility will be consumed.

8 (2) Effective July 1, 2004, a credit is allowed against the tax due  
9 under this chapter to a direct service industrial customer who  
10 purchases natural or manufactured gas from a gas distribution business  
11 subject to the public utility tax under chapter 82.16 RCW. The credit  
12 is equal to the value of natural or manufactured gas purchased from a  
13 gas distribution business that is used to generate electricity at the  
14 facility and consumed by the direct service industrial customer  
15 multiplied by the rate in effect for the public utility tax on gas  
16 distribution businesses under RCW 82.16.020. This credit may be used  
17 each reporting period for sixty months following the first month  
18 natural or manufactured gas was purchased from a gas distribution  
19 business by a direct service industrial customer who constructs a  
20 facility.

21 (3) For any direct service industrial customer electing between  
22 January 1, 2000, and October 1, 2001, to have the Bonneville power  
23 administration repurchase or remarket power not delivered to the  
24 company for use in its operations, this credit is available only to a  
25 person who uses resale proceeds or agrees with the Bonneville power  
26 administration to use net remarketing proceeds for the following  
27 purposes:

28 (a) Expenditures or costs related to curtailing production,  
29 including at a minimum compensation, benefits, other expenditures  
30 related to employee layoffs, maintaining additional employees not  
31 required for operations at the reduced level, or job reassignments as  
32 a result of reduced operations; and

33 (b) Expenditures or costs incurred related to plans for securing a  
34 future power supply and enhancement of operations at facilities located  
35 in Washington, including expenses related to new nonfederal power  
36 sources and expenses to upgrade facilities to achieve energy  
37 conservation, operating efficiencies, environmental benefits, or  
38 preserving jobs.

1 (4) Subsection (3) of this section may not be construed to  
2 disqualify a direct service industrial customer that uses resale  
3 proceeds or that agrees with the Bonneville power administration to use  
4 net remarketing proceeds for additional purposes beyond those specified  
5 in subsection (3) of this section.

6 (5) Application for credit shall be made by the direct service  
7 industrial consumer before the first purchase of natural or  
8 manufactured gas. The application shall be in a form and manner  
9 prescribed by the department and shall include but is not limited to  
10 information regarding the location of the facility, the projected date  
11 of first purchase of natural or manufactured gas to generate  
12 electricity at the facility, the date construction is projected to  
13 begin or did begin, the applicant's average annual employment in the  
14 state for the six calendar years immediately preceding the year in  
15 which the application is made, and affirm the applicant's status as a  
16 direct service industrial customer. The department shall rule on the  
17 application within thirty days of receipt.

18 (6) Credit under this section is limited to the amount of tax  
19 imposed under this chapter. Refunds shall not be given in place of  
20 credits and credits may not be carried over to subsequent calendar  
21 years.

22 (7) All or part of the credit shall be disallowed and must be paid  
23 if the average of the direct service industrial customer's average  
24 annual employment for the five calendar years subsequent to the  
25 calendar year containing the first month of purchase of natural or  
26 manufactured gas to generate electricity at a facility is less than the  
27 six-year average annual employment stated on the application for credit  
28 under this section. The direct service industrial customer will  
29 certify to the department by June 1st of the sixth calendar year  
30 following the calendar year in which the month of first purchase of gas  
31 occurs the average annual employment for each of the five prior  
32 calendar years. All or part of the credit that shall be disallowed and  
33 must be paid is commensurate with the decrease in the five-year average  
34 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%

1	25% or more but less than 50%	50%
2	50% or more but less than 75%	75%
3	75% or more	100%

4 (8)(a) The direct service industrial customer shall begin paying  
5 the credit that is disallowed and is to be paid in the sixth calendar  
6 year following the calendar year in which the month following the month  
7 of first purchase of natural or manufactured gas to generate  
8 electricity at the facility occurs. The first payment will be due on  
9 or before December 31st with subsequent annual payments due on or  
10 before December 31st of the following four years according to the  
11 following schedule:

12	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
13	1	10%
14	2	15%
15	3	20%
16	4	25%
17	5	30%

18 (b) The department may authorize an accelerated payment schedule  
19 upon request of the taxpayer.

20 (c) Interest shall not be charged on the credit that is disallowed  
21 for the sixty-month period the credit may be taken, although all other  
22 penalties and interest applicable to delinquent excise taxes may be  
23 assessed and imposed. The debt for credit that is disallowed and must  
24 be paid will not be extinguished by insolvency or other failure of the  
25 direct service industrial customer. Transfer of ownership of the  
26 facility does not affect eligibility for this credit. However, the  
27 credit is available to the successor only if the eligibility conditions  
28 of this section are met.

29 (9) The employment security department shall make, and certify to  
30 the department of revenue, all determinations of employment under this  
31 section as requested by the department.

32 (10) A person claiming this credit shall supply to the department  
33 quarterly reports containing information necessary to document the  
34 total volume of natural or manufactured gas purchased in the quarter,  
35 the value of that total volume, and the percentage of the total volume  
36 used to generate electricity at the facility.

1        NEW SECTION.    **Sec. 17.**    A new section is added to chapter 82.12 RCW  
2 to read as follows:

3        (1) Unless the context clearly requires otherwise, the definitions  
4 in this subsection apply throughout this section.

5        (a) "Direct service industrial customer" means a person who is an  
6 industrial customer that contracts for the purchase of power from the  
7 Bonneville power administration for direct consumption as of the  
8 effective date of this section. "Direct service industrial customer"  
9 includes a person who is a subsidiary that is more than fifty percent  
10 owned by a direct service industrial customer and who receives power  
11 from the Bonneville power administration pursuant to the parent's  
12 contract for power.

13        (b) "Facility" means a gas turbine electrical generation facility  
14 that does not exist on the effective date of this section and is owned  
15 by a direct service industrial customer for the purpose of producing  
16 electricity to be consumed by the direct service industrial customer.

17        (c) "Average annual employment" means the total employment in this  
18 state for a calendar year at the direct service industrial customer's  
19 location where electricity from the facility will be consumed.

20        (2) Effective July 1, 2004, the tax levied in RCW 82.12.022 on the  
21 first sixty months' use of natural or manufactured gas by a direct  
22 service industrial customer that owns a facility shall be deferred.  
23 This deferral is limited to the tax on natural or manufactured gas that  
24 is used or consumed to generate electricity at the facility and  
25 consumed by the direct service industrial customer.

26        (3) For any direct service industrial customer electing between  
27 January 1, 2000, and October 1, 2001, to have the Bonneville power  
28 administration repurchase or remarket power not delivered to the  
29 company for use in its operations, this deferral is available only to  
30 a person who uses resale proceeds or agrees with the Bonneville power  
31 administration to use net remarketing proceeds for the following  
32 purposes:

33        (a) Expenditures or costs related to curtailing production,  
34 including at a minimum compensation, benefits, other expenditures  
35 related to employee layoffs, maintaining additional employees not  
36 required for operations at the reduced level, or job reassignments as  
37 a result of reduced operations; and

38        (b) Expenditures or costs incurred related to plans for securing a  
39 future power supply and enhancement of operations at facilities located

1 in Washington, including expenses related to new nonfederal power  
2 sources and expenses to upgrade facilities to achieve energy  
3 conservation, operating efficiencies, environmental benefits, or  
4 preserving jobs.

5 (4) Subsection (3) of this section may not be construed to  
6 disqualify a direct service industrial customer that uses resale  
7 proceeds or that agrees with the Bonneville power administration to use  
8 net remarketing proceeds for additional purposes beyond those specified  
9 in subsection (3) of this section.

10 (5) Application for deferral shall be made by the direct service  
11 industrial customer before the first use of natural or manufactured  
12 gas. The application shall be in a form and manner prescribed by the  
13 department and shall include but is not limited to information  
14 regarding the location of the facility, the projected date of first use  
15 of natural or manufactured gas to generate electricity at the facility,  
16 the date construction is projected to begin or did begin, the  
17 applicant's average annual employment in the state for the six calendar  
18 years immediately preceding the year in which the application is made,  
19 and shall affirm the applicant's status as a direct service industrial  
20 customer. The department shall rule on the application within thirty  
21 days of receipt.

22 (6)(a) The direct service industrial customer shall begin paying  
23 the deferred tax in the sixth calendar year following the calendar year  
24 in which the month of first use of natural or manufactured gas to  
25 generate electricity at the facility occurs. The first payment will be  
26 due on or before December 31st with subsequent annual payments due on  
27 or before December 31st of the following four years according to the  
28 following schedule:

29	<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
30	1	10%
31	2	15%
32	3	20%
33	4	25%
34	5	30%

35 (b) The department may authorize an accelerated payment schedule  
36 upon request of the taxpayer.

37 (c) Interest shall not be charged on the tax deferred under this  
38 section for the period of deferral, although all other penalties and

1 interest applicable to delinquent excise taxes may be assessed and  
2 imposed. The debt for deferred tax will not be extinguished by  
3 insolvency or other failure of the direct service industrial customer.  
4 Transfer of ownership of the facility does not affect deferral  
5 eligibility. However, the deferral is available to the successor only  
6 if the eligibility conditions of this section are met.

7 (7)(a) If the average of the direct service industrial customer's  
8 average annual employment for the five calendar years subsequent to the  
9 calendar year containing the first month of use of natural or  
10 manufactured gas to generate electricity at a facility is equal to or  
11 exceeds the six-year average annual employment stated on the  
12 application for deferral under this section, the tax deferred need not  
13 be paid. The direct service industrial customer shall certify to the  
14 department by June 1st of the sixth calendar year following the  
15 calendar year in which the month of first use of gas occurs the average  
16 annual employment for each of the five prior calendar years.

17 (b) If the five-year average calculated in (a) of this subsection  
18 is less than the average annual employment stated on the application  
19 for deferral under this section, the tax deferred under this section  
20 shall be paid in the amount as follows:

21	<u>Decrease in Average Annual</u>	
22	<u>Employment Over</u>	<u>% of Deferred</u>
23	<u>Five-Year Period</u>	<u>Tax to be Paid</u>
24	Less than 10%	10%
25	10% or more but less than 25%	25%
26	25% or more but less than 50%	50%
27	50% or more but less than 75%	75%
28	75% or more	100%

29 (c) Tax paid under this subsection shall be paid according to the  
30 schedule in subsection (6)(a) of this section and under the terms and  
31 conditions of subsection (6)(b) and (c) of this section.

32 (8) The employment security department shall make, and certify to  
33 the department of revenue, all determinations of employment under this  
34 section as requested by the department.

35 (9) A person claiming this deferral shall supply to the department  
36 quarterly reports containing information necessary to document the  
37 total volume of natural or manufactured gas purchased in the quarter,



1 the value of that total volume, and the percentage of the total volume  
2 used to generate electricity at the facility.

3 NEW SECTION. **Sec. 18.** A new section is added to chapter 82.16 RCW  
4 to read as follows:

5 (1) Unless the context clearly requires otherwise, the definitions  
6 in this subsection apply throughout this section.

7 (a) "Direct service industrial customer" means a person who is an  
8 industrial customer that contracts for the purchase of power from the  
9 Bonneville power administration for direct consumption as of the  
10 effective date of this section. "Direct service industrial customer"  
11 includes a person who is a subsidiary that is more than fifty percent  
12 owned by a direct service industrial customer and who receives power  
13 from the Bonneville power administration pursuant to the parent's  
14 contract for power.

15 (b) "Facility" means a gas turbine electrical generation facility  
16 that does not exist on the effective date of this section.

17 (c) "Average annual employment" means the total employment in this  
18 state for a calendar year at the direct service industrial customer's  
19 location where electricity from the facility will be consumed.

20 (2) Effective July 1, 2004, a credit is allowed against the tax due  
21 under this chapter on sales of electricity made from a facility to a  
22 direct service industrial customer if the contract for sale of  
23 electricity to a direct service industrial customer contains the  
24 following terms:

25 (a) Sales of electricity from the facility to the direct service  
26 industrial customer will be made for ten consecutive years or more;

27 (b) The price charged for the electricity will be reduced by an  
28 amount equal to the tax credit; and

29 (c) Disallowance of all or part of the credit under subsection (7)  
30 of this section is a breach of contract and the damages to be paid by  
31 the direct service industrial customer to the facility are the amount  
32 of tax credit disallowed.

33 (3) The credit is equal to the gross proceeds from the sale of the  
34 electricity made to and consumed by a direct service industrial  
35 customer multiplied by the rate in effect at the time of the sale for  
36 the public utility tax on light and power businesses under RCW  
37 82.16.020. The credit may be used each reporting period for sixty  
38 months following the first month electricity is sold from a facility to

1 a direct service industrial customer. Credit under this section is  
2 limited to the amount of tax imposed under this chapter. Refunds shall  
3 not be given in place of credits and credits may not be carried over to  
4 subsequent calendar years.

5 (4) For any direct service industrial customer electing between  
6 January 1, 2000, and October 1, 2001, to have the Bonneville power  
7 administration repurchase or remarket power not delivered to the  
8 company for use in its operations, this exemption is available only to  
9 a person who uses resale proceeds or agrees with the Bonneville power  
10 administration to use net remarketing proceeds for the following  
11 purposes:

12 (a) Expenditures or costs related to curtailing production,  
13 including at a minimum compensation, benefits, other expenditures  
14 related to employee layoffs, maintaining additional employees not  
15 required for operations at the reduced level, or job reassignments as  
16 a result of reduced operations; and

17 (b) Expenditures or costs incurred related to plans for securing a  
18 future power supply and enhancement of operations at facilities located  
19 in Washington, including expenses related to new nonfederal power  
20 sources and expenses to upgrade facilities to achieve energy  
21 conservation, operating efficiencies, environmental benefits, or  
22 preserving jobs.

23 (5) Subsection (4) of this section may not be construed to  
24 disqualify a direct service industrial customer that uses resale  
25 proceeds or that agrees with the Bonneville power administration to use  
26 net remarketing proceeds for additional purposes beyond those specified  
27 in subsection (4) of this section.

28 (6) Application for credit shall be made before the first sale of  
29 electricity from a facility to a direct service industrial customer.  
30 The application shall be in a form and manner prescribed by the  
31 department and shall include but is not limited to information  
32 regarding the location of the facility, identification of the direct  
33 service industrial customer who will receive electricity from the  
34 facility, the projected date of the first sale of electricity to a  
35 direct service industrial customer, the date construction is projected  
36 to begin or did begin, and the average annual employment in the state  
37 of the direct service industrial customer who will receive electricity  
38 from the facility for the six calendar years immediately preceding the  
39 year in which the application is made. A copy of the contract for sale

1 of electricity must be attached to the application. The department  
2 shall rule on the application within thirty days of receipt.

3 (7) All or part of the credit shall be disallowed and must be paid  
4 if the average of the direct service industrial customer's average  
5 annual employment for the five calendar years subsequent to the  
6 calendar year containing the first month of sale of electricity from a  
7 facility to a direct service industrial customer is less than the six-  
8 year average annual employment stated on the application for credit  
9 under this section. The direct service industrial customer shall  
10 certify to the department and to the facility by June 1st of the sixth  
11 calendar year following the calendar year in which the month of first  
12 sale occurs the average annual employment for each of the five prior  
13 calendar years. All or part of the credit that shall be disallowed and  
14 must be paid is commensurate with the decrease in the five-year average  
15 of average annual employment as follows:

16	<u>Decrease in Average Annual</u>	
17	<u>Employment Over</u>	
18	<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
19	Less than 10%	10%
20	10% or more but less than 25%	25%
21	25% or more but less than 50%	50%
22	50% or more but less than 75%	75%
23	75% or more	100%

24 (8)(a) Payments on credit that is disallowed shall begin in the  
25 sixth calendar year following the calendar year in which the month  
26 following the first month of sale of electricity from a facility to a  
27 direct service industrial customer occurs. The first payment will be  
28 due on or before December 31st with subsequent annual payments due on  
29 or before December 31st of the following four years according to the  
30 schedule in this subsection.

31	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
32	1	10%
33	2	15%
34	3	20%
35	4	25%
36	5	30%

1 (b) The department may authorize an accelerated payment schedule  
2 upon request of the taxpayer.

3 (c) Interest shall not be charged on the credit that is disallowed  
4 for the sixty-month period the credit may be taken, although all other  
5 penalties and interest applicable to delinquent excise taxes may be  
6 assessed and imposed. The debt for credit that is disallowed and must  
7 be paid will not be extinguished by insolvency or other failure of the  
8 taxpayer. Transfer of ownership of the facility does not affect  
9 eligibility for this credit. However, the credit is available to the  
10 successor only if the eligibility conditions of this section are met.

11 (9) The employment security department shall make, and certify to  
12 the department of revenue, all determinations of employment under this  
13 section as requested by the department.

14 NEW SECTION. **Sec. 19.** A new section is added to chapter 82.32 RCW  
15 to read as follows:

16 (1) The total combined credits and deferrals that may be taken  
17 under sections 16 through 18 of this act shall not exceed four million  
18 dollars in any fiscal year. Each person is limited to no more than a  
19 total of two million dollars in tax deferred and credit allowed in any  
20 fiscal year. The department may require reporting of the credits taken  
21 and amounts deferred in a manner and form as is necessary to keep a  
22 running total of the amounts.

23 (2) Credits and deferred tax are available on a first come basis.  
24 The department shall disallow any credits or deferred tax, or portion  
25 thereof, that would cause the total amount of credits taken and  
26 deferred taxes claimed to exceed the fiscal year cap or to exceed the  
27 per person fiscal year cap. If the fiscal cap is reached or exceeded  
28 the department shall notify those persons who have approved  
29 applications under sections 16 through 18 of this act that no more  
30 credits may be taken or tax deferred during the remainder of the fiscal  
31 year. In addition, the department shall provide written notice to any  
32 person who has taken any tax credits or claimed any deferred tax in  
33 excess of the fiscal year cap. The notice shall indicate the amount of  
34 tax due and shall provide that the tax be paid within thirty days from  
35 the date of such notice.

36 (3) No portion of an application for credit or deferral disallowed  
37 under this section may be carried back or carried forward nor may taxes

1 ineligible for credit or deferral due to the fiscal cap having been  
2 reached or exceeded be carried forward or carried backward.

3 **Sec. 20.** RCW 80.52.030 and 1995 c 69 s 2 are each amended to read  
4 as follows:

5 The definitions set forth in this section apply throughout this  
6 chapter unless the context clearly requires otherwise.

7 (1) "Public agency" means a public utility district, joint  
8 operating agency, city, county, or any other state governmental agency,  
9 entity, or political subdivision.

10 (2) "Major public energy project" means: (a) A nuclear power plant  
11 ((or installation capable, or intended to be capable, of generating  
12 electricity in an amount greater than two hundred fifty megawatts,  
13 measured using maximum continuous electric generating capacity, less  
14 minimum auxiliary load, at average ambient temperature and pressure.  
15 Where two or more such plants are located within the same geographic  
16 site, each plant shall be considered a major public energy project. An  
17 addition to an existing facility is not deemed to be a major energy  
18 project unless the addition itself is capable, or intended to be  
19 capable, of generating electricity in an amount greater than two  
20 hundred fifty megawatts)); (b) any energy project where the total  
21 amount of bonds requested by one or more public agencies for the cost  
22 of construction or cost of acquisition will exceed one billion dollars;  
23 or (c) any power plant capable, or intended to be capable, of  
24 generating electricity in an amount greater than seven hundred  
25 megawatts, measured using maximum continuous electric generating  
26 capacity, less minimum auxiliary load, at average ambient temperature  
27 and pressure. Where two or more plants will be located within the same  
28 geographic site, or funded by the same bonds, the combined total  
29 generating capacity shall be used to determine whether the project is  
30 a major public energy project. A project which is under construction  
31 on July 1, 1982, shall not be considered a major public energy project  
32 unless the official agency budget or estimate for total construction  
33 costs for the project as of July 1, 1982, is more than two hundred  
34 percent of the first official estimate of total construction costs as  
35 specified in the senate energy and utilities committee WPPSS inquiry  
36 report, volume one, January 12, 1981, and unless, as of July 1, 1982,  
37 the projected remaining cost of construction for that project exceeds  
38 two hundred million dollars.

1 (3) "Cost of construction" means the total cost of planning and  
2 building a major public energy project and placing it into operation,  
3 including, but not limited to, planning cost, direct construction cost,  
4 licensing cost, cost of fuel inventory for the first year's operation,  
5 interest, and all other costs incurred prior to the first day of full  
6 operation, whether or not incurred prior to July 1, 1982.

7 (4) "Cost of acquisition" means the total cost of acquiring a major  
8 public energy project from another party, including, but not limited  
9 to, principal and interest costs.

10 (5) "Bond" means a revenue bond, a general obligation bond, or any  
11 other indebtedness issued by a public agency or its assignee.

12 (6) "Applicant" means a public agency, or the assignee of a public  
13 agency, requesting the secretary of state to conduct an election  
14 pursuant to this chapter.

15 (7) "Cost-effective" means that a project or resource is forecast:

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

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

21 (8) "System cost" means an estimate of all direct costs of a  
22 project or resource over its effective life, including, if applicable,  
23 the costs of distribution to the consumer, and, among other factors,  
24 waste disposal costs, end-of-cycle costs, and fuel costs (including  
25 projected increases), and such quantifiable environmental costs and  
26 benefits as are directly attributable to the project or resource.

27 NEW SECTION. **Sec. 21.** A new section is added to chapter 80.52 RCW  
28 to read as follows:

29 (1) Before approving financing for any large public energy project  
30 that is not subject to the voter approval requirements of this chapter,  
31 a public agency must submit to its governing board a cost-effectiveness  
32 study pertaining to the project under consideration. The study must be  
33 prepared by an independent consultant and must be available for public  
34 review and comment for at least thirty days after submission to the  
35 governing board.

36 (2) At the end of the thirty-day period, the public agency must  
37 conduct a public hearing on the project under consideration and the

1 cost-effectiveness study. Notice of the public hearing must provide at  
2 least the following information:

3 (a) The name, location, and type of large public energy project,  
4 expressed in common terms;

5 (b) The dollar amount and type of bonds being requested;

6 (c) If the bond issuance is intended to finance the acquisition of  
7 all or a portion of the project, the anticipated total cost of the  
8 acquisition of the project;

9 (d) If the bond issuance is intended to finance the planning or  
10 construction of all or a portion of the project, the anticipated total  
11 cost of construction of the project;

12 (e) The projected average rate increase for consumers of the  
13 electricity to be generated by the project. The rate increase must be  
14 that which is necessary to repay the total indebtedness incurred for  
15 the project, including estimated interest;

16 (f) A summary of the final cost-effectiveness study conducted under  
17 subsection (1) of this section;

18 (g) The anticipated functional life of the project; and

19 (h) The anticipated decommissioning costs of the project.

20 (3) For the purposes of this section, a "large public energy  
21 project that is not subject to the voter approval requirements of this  
22 chapter" means a nonnuclear plant or installation capable, or intended  
23 to be capable, of generating electricity in an amount greater than two  
24 hundred fifty megawatts, measured using maximum continuous electric  
25 generating capacity, less minimum auxiliary load, at average ambient  
26 temperature and pressure. Where two or more such plants are located  
27 within the same geographic site, each plant is considered a large  
28 public energy project. An addition to an existing facility is not a  
29 large public energy project unless the addition itself is capable, or  
30 intended to be capable, of generating electricity in an amount greater  
31 than two hundred fifty megawatts.

32 NEW SECTION. Sec. 22. A new section is added to chapter 82.34 RCW  
33 to read as follows:

34 (1) The following definitions apply throughout this section:

35 (a) "Qualifying facility" means an air pollution control facility  
36 as that term is defined in RCW 82.34.010(1)(a) to be installed or  
37 acquired for a thermal electric peaking plant and which is approved  
38 pursuant to the Washington clean air act, chapter 70.94 RCW.

1 (b) "Thermal electric peaking plant" means a natural gas-fired  
2 thermal electric generating facility operated by a light and power  
3 business and placed into service between January 1, 1978, and December  
4 31, 1984, and that is registered for the calendar year 2000 pursuant to  
5 RCW 70.94.151.

6 (c) "Light and power business" has the same meaning as in RCW  
7 82.16.010.

8 (2) The department shall, upon written request of a light and power  
9 business to which the approval issued under chapter 70.94 RCW is  
10 attached, make a determination as to whether a plant is a thermal  
11 electric peaking plant acquiring or installing a qualifying facility  
12 eligible under this section. The department shall consult with the  
13 department of community, trade, and economic development and the  
14 department of ecology in making the determination. If the  
15 determination is in the affirmative, the department shall issue the  
16 light and power business a sales and use tax exemption certificate in  
17 a form and manner as deemed appropriate by the department.

18 (3) Effective July 1, 2001, the charges for installation or  
19 acquisition of a qualifying facility by the holder of the certificate  
20 are exempt from sales tax imposed under chapter 82.08 RCW and use tax  
21 imposed under chapter 82.12 RCW. The purchaser must provide the seller  
22 with a copy of the sales and use tax exemption certificate. The seller  
23 shall retain a copy of the certificate for the seller's files.

24 (4) The exemption in this section is limited to the installation or  
25 acquisition of a qualifying facility and does not apply to servicing,  
26 maintenance, operation, or repairs of a thermal electric peaking plant  
27 or of an air pollution control facility.

28 (5) This section expires June 30, 2003.

29 NEW SECTION. **Sec. 23.** (1) The legislature hereby finds that:

30 (a) The economy of the state and the health, safety, and welfare of  
31 its citizens are threatened by the current energy supply and price  
32 instabilities;

33 (b) Many energy efficiency programs for public buildings launched  
34 during the 1970s and 1980s were not maintained during the subsequent  
35 sustained period of low energy costs and abundant supply; and

36 (c) Conservation programs originally established in the 1970s and  
37 1980s can be improved or updated. New programs drawing on recently  
38 developed technologies, including demand-side energy management



1 systems, can materially increase the efficiency of energy use by the  
2 public sector.

3 (2) It is the policy of the state of Washington that:

4 (a) State government is committed to achieving significant gains in  
5 energy efficiency. Conventional conservation programs will be reviewed  
6 and updated in light of experience gained since their commencement;

7 (b) State government must play a leading role in demonstrating  
8 updated and new energy efficiency technologies. New programs or  
9 measures made possible by technological advances, such as demand-side  
10 response measures and energy management systems, shall be treated in  
11 the same manner as conventional conservation programs and will be  
12 integrated into the state's energy efficiency programs.

13 **Sec. 24.** RCW 39.35.010 and 1982 c 159 s 1 are each amended to read  
14 as follows:

15 The legislature hereby finds:

16 (1) That major publicly owned or leased facilities have a  
17 significant impact on our state's consumption of energy;

18 (2) That energy conservation practices including energy management  
19 systems and renewable energy systems adopted for the design,  
20 construction, and utilization of such facilities will have a beneficial  
21 effect on our overall supply of energy;

22 (3) That the cost of the energy consumed by such facilities over  
23 the life of the facilities shall be considered in addition to the  
24 initial cost of constructing such facilities;

25 (4) That the cost of energy is significant and major facility  
26 designs shall be based on the total life-cycle cost, including the  
27 initial construction cost, and the cost, over the economic life of a  
28 major facility, of the energy consumed, and of the operation and  
29 maintenance of a major facility as they affect energy consumption; and

30 (5) That the use of energy systems in these facilities which  
31 utilize renewable resources such as solar energy, wood or wood waste,  
32 or other nonconventional fuels (~~should~~), and which incorporate energy  
33 management systems, shall be considered in the design of all publicly  
34 owned or leased facilities.

35 **Sec. 25.** RCW 39.35.030 and 1996 c 186 s 402 are each amended to  
36 read as follows:

1 For the purposes of this chapter the following words and phrases  
2 shall have the following meanings unless the context clearly requires  
3 otherwise:

4 (1) "Public agency" means every state office, officer, board,  
5 commission, committee, bureau, department, and all political  
6 subdivisions of the state.

7 (2) "Department" means the state department of general  
8 administration.

9 (3) "Major facility" means any publicly owned or leased building  
10 having twenty-five thousand square feet or more of usable floor space.

11 (4) "Initial cost" means the moneys required for the capital  
12 construction or renovation of a major facility.

13 (5) "Renovation" means additions, alterations, or repairs within  
14 any twelve-month period which exceed fifty percent of the value of a  
15 major facility and which will affect any energy system.

16 (6) "Economic life" means the projected or anticipated useful life  
17 of a major facility as expressed by a term of years.

18 (7) "Energy management system" means a program, energy efficiency  
19 equipment, technology, device, or other measure including, but not  
20 limited to, a management, educational, or promotional program, smart  
21 appliance, meter reading system that provides energy information  
22 capability, computer software or hardware, communications equipment or  
23 hardware, thermostat or other control equipment, together with related  
24 administrative or operational programs, that allows identification and  
25 management of opportunities for improvement in the efficiency of energy  
26 use, including but not limited to a measure that allows:

27 (a) Energy consumers to obtain information about their energy usage  
28 and the cost of energy in connection with their usage;

29 (b) Interactive communication between energy consumers and their  
30 energy suppliers;

31 (c) Energy consumers to respond to energy price signals and to  
32 manage their purchase and use of energy; or

33 (d) For other kinds of dynamic, demand-side energy management.

34 (8) "Life-cycle cost" means the initial cost and cost of operation  
35 of a major facility over its economic life. This shall be calculated  
36 as the initial cost plus the operation, maintenance, and energy costs  
37 over its economic life, reflecting anticipated increases in these costs  
38 discounted to present value at the current rate for borrowing public  
39 funds, as determined by the office of financial management. The energy

1 cost projections used shall be those provided by the department. The  
2 department shall update these projections at least every two years.

3 ~~((+8+))~~ (9) "Life-cycle cost analysis" includes, but is not limited  
4 to, the following elements:

5 (a) The coordination and positioning of a major facility on its  
6 physical site;

7 (b) The amount and type of fenestration employed in a major  
8 facility;

9 (c) The amount of insulation incorporated into the design of a  
10 major facility;

11 (d) The variable occupancy and operating conditions of a major  
12 facility; and

13 (e) An energy-consumption analysis of a major facility.

14 ~~((+9+))~~ (10) "Energy systems" means all utilities, including, but  
15 not limited to, heating, air-conditioning, ventilating, lighting, and  
16 the supplying of domestic hot water.

17 ~~((+10+))~~ (11) "Energy-consumption analysis" means the evaluation of  
18 all energy systems and components by demand and type of energy  
19 including the internal energy load imposed on a major facility by its  
20 occupants, equipment, and components, and the external energy load  
21 imposed on a major facility by the climatic conditions of its location.  
22 An energy-consumption analysis of the operation of energy systems of a  
23 major facility shall include, but not be limited to, the following  
24 elements:

25 (a) The comparison of three or more system alternatives, at least  
26 one of which shall include renewable energy systems, and one of which  
27 shall comply at a minimum with the sustainable design guidelines of the  
28 United States green building council leadership in energy and  
29 environmental design silver standard or similar design standard as may  
30 be adopted by rule by the department;

31 (b) The simulation of each system over the entire range of  
32 operation of such facility for a year's operating period; and

33 (c) The evaluation of the energy consumption of component equipment  
34 in each system considering the operation of such components at other  
35 than full or rated outputs.

36 The energy-consumption analysis shall be prepared by a professional  
37 engineer or licensed architect who may use computers or such other  
38 methods as are capable of producing predictable results.

1       (~~(11)~~) (12) "Renewable energy systems" means methods of facility  
2 design and construction and types of equipment for the utilization of  
3 renewable energy sources including, but not limited to, hydroelectric  
4 power, active or passive solar space heating or cooling, domestic solar  
5 water heating, windmills, waste heat, biomass and/or refuse-derived  
6 fuels, photovoltaic devices, and geothermal energy.

7       (~~(12)~~) (13) "Cogeneration" means the sequential generation of two  
8 or more forms of energy from a common fuel or energy source. Where  
9 these forms are electricity and thermal energy, then the operating and  
10 efficiency standards established by 18 C.F.R. Sec. 292.205 and the  
11 definitions established by 18 C.F.R. 292.202 (c) through (m) as of July  
12 28, 1991, shall apply.

13       (~~(13)~~) (14) "Selected buildings" means educational, office,  
14 residential care, and correctional facilities that are designed to  
15 comply with the design standards analyzed and recommended by the  
16 department.

17       (~~(14)~~) (15) "Design standards" means the heating, air-  
18 conditioning, ventilating, and renewable resource systems identified,  
19 analyzed, and recommended by the department as providing an efficient  
20 energy system or systems based on the economic life of the selected  
21 buildings.

22       **Sec. 26.** RCW 39.35.050 and 1996 c 186 s 403 are each amended to  
23 read as follows:

24       The department, in consultation with affected public agencies,  
25 shall develop and issue guidelines for administering this chapter. The  
26 purpose of the guidelines is to define a procedure and method for  
27 performance of life-cycle cost analysis to promote the selection of  
28 low-life-cycle cost alternatives. At a minimum, the guidelines must  
29 contain provisions that:

30       (1) Address energy considerations during the planning phase of the  
31 project;

32       (2) Identify energy components and system alternatives including  
33 energy management systems, renewable energy systems, and cogeneration  
34 applications prior to commencing the energy consumption analysis;

35       (3) Identify simplified methods to assure the lowest life-cycle  
36 cost alternatives for selected buildings with between twenty-five  
37 thousand and one hundred thousand square feet of usable floor area;

- 1 (4) Establish times during the design process for preparation,
- 2 review, and approval or disapproval of the life-cycle cost analysis;
- 3 (5) Specify the assumptions to be used for escalation and inflation
- 4 rates, equipment service lives, economic building lives, and
- 5 maintenance costs;
- 6 (6) Determine life-cycle cost analysis format and submittal
- 7 requirements to meet the provisions of chapter 201, Laws of 1991;
- 8 (7) Provide for review and approval of life-cycle cost analysis.

9 **Sec. 27.** RCW 39.35A.020 and 1985 c 169 s 2 are each amended to  
10 read as follows:

11 Unless the context clearly indicates otherwise, the definitions in  
12 this section shall apply throughout this chapter.

13 (1) "Energy equipment and services" means energy management systems  
14 and any equipment, materials, or supplies that are expected, upon  
15 installation, to reduce the energy use or energy cost of an existing  
16 building or facility, and the services associated with the equipment,  
17 materials, or supplies, including but not limited to design,  
18 engineering, financing, installation, project management, guarantees,  
19 operations, and maintenance.

20 (2) "Energy management system" has the definition provided in RCW  
21 39.35.030.

22 (3) "Municipality" has the definition provided in RCW 39.04.010.

23 ((+3)) (4) "Performance-based contract" means one or more  
24 contracts for energy equipment and services between a municipality and  
25 any other persons or entities, if the payment obligation for each year  
26 under the contract, including the year of installation, is either: (a)  
27 Set as a percentage of the annual energy cost savings attributable  
28 under the contract to the energy equipment and services; or (b)  
29 guaranteed by the other persons or entities to be less than the annual  
30 energy cost savings attributable under the contract to the energy  
31 equipment and services. Such guarantee shall be, at the option of the  
32 municipality, a bond or insurance policy, or some other guarantee  
33 determined sufficient by the municipality to provide a level of  
34 assurance similar to the level provided by a bond or insurance policy.

35 NEW SECTION. **Sec. 28.** A new section is added to chapter 39.35A  
36 RCW to read as follows:

1 The state department of general administration shall maintain a  
2 registry of energy service contractors and provide assistance to  
3 municipalities in identifying available performance-based contracting  
4 services.

5 **Sec. 29.** RCW 39.35C.010 and 1996 c 186 s 405 are each amended to  
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Cogeneration" means the sequential generation of two or more  
10 forms of energy from a common fuel or energy source. If these forms  
11 are electricity and thermal energy, then the operating and efficiency  
12 standards established by 18 C.F.R. Sec. 292.205 and the definitions  
13 established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

14 (2) "Conservation" means reduced energy consumption or energy cost,  
15 or increased efficiency in the use of energy, and activities, measures,  
16 or equipment designed to achieve such results, but does not include  
17 thermal or electric energy production from cogeneration.

18 (3) "Cost-effective" means that the present value to a state agency  
19 or school district of the energy reasonably expected to be saved or  
20 produced by a facility, activity, measure, or piece of equipment over  
21 its useful life, including any compensation received from a utility or  
22 the Bonneville power administration, is greater than the net present  
23 value of the costs of implementing, maintaining, and operating such  
24 facility, activity, measure, or piece of equipment over its useful  
25 life, when discounted at the cost of public borrowing.

26 (4) "Energy" means energy as defined in RCW 43.21F.025(1).

27 (5) "Energy audit" has the definition provided in RCW 43.19.670.

28 (6) "Energy efficiency project" means a conservation or  
29 cogeneration project.

30 ~~((+6))~~ (7) "Energy efficiency services" means assistance furnished  
31 by the department to state agencies and school districts in  
32 identifying, evaluating, and implementing energy efficiency projects.

33 ~~((+7))~~ (8) "Department" means the state department of general  
34 administration.

35 ~~((+8))~~ (9) "Performance-based contracting" means contracts for  
36 which payment is conditional on achieving contractually specified  
37 energy savings.

1       (~~(9)~~) (10) "Public agency" means every state office, officer,  
2 board, commission, committee, bureau, department, and all political  
3 subdivisions of the state.

4       (~~(10)~~) (11) "Public facility" means a building or structure, or  
5 a group of buildings or structures at a single site, owned by a state  
6 agency or school district.

7       (~~(11)~~) (12) "State agency" means every state office or  
8 department, whether elective or appointive, state institutions of  
9 higher education, and all boards, commissions, or divisions of state  
10 government, however designated.

11       (~~(12)~~) (13) "State facility" means a building or structure, or a  
12 group of buildings or structures at a single site, owned by a state  
13 agency.

14       (~~(13)~~) (14) "Utility" means privately or publicly owned electric  
15 and gas utilities, electric cooperatives and mutuals, whether located  
16 within or without Washington state.

17       (~~(14)~~) (15) "Local utility" means the utility or utilities in  
18 whose service territory a public facility is located.

19       **Sec. 30.** RCW 39.35C.020 and 1996 c 186 s 406 are each amended to  
20 read as follows:

21       (1) Each state agency and school district shall implement cost-  
22 effective conservation improvements and maintain efficient operation of  
23 its facilities in order to minimize energy consumption and related  
24 environmental impacts and reduce operating costs. Each state agency  
25 shall undertake an energy audit and implement cost-effective  
26 conservation measures pursuant to the time schedules and requirements  
27 set forth in chapter 43.19 RCW, except that any state agency that,  
28 after December 31, 1997, has completed energy audits and implemented  
29 cost-effective conservation measures, or has contracted with an energy  
30 service company for energy audits and conservation measures, is deemed  
31 to have met the requirements of this subsection for those facilities  
32 included in the audits and conservation measures. Each school district  
33 shall undertake an energy audit and implement cost-effective  
34 conservation measures pursuant to the time schedules and requirements  
35 set forth in section 31 of this act. Performance-based contracting  
36 shall be the preferred method for completing energy audits and  
37 implementing cost-effective conservation measures.

1 (2) The department shall assist state agencies and school districts  
2 in identifying, evaluating, and implementing cost-effective  
3 conservation projects at their facilities. The assistance shall  
4 include the following:

5 (a) Notifying state agencies and school districts of their  
6 responsibilities under this chapter;

7 (b) Apprising state agencies and school districts of opportunities  
8 to develop and finance such projects;

9 (c) Providing technical and analytical support, including  
10 procurement of performance-based contracting services;

11 (d) Reviewing verification procedures for energy savings; and

12 (e) Assisting in the structuring and arranging of financing for  
13 cost-effective conservation projects.

14 (3) Conservation projects implemented under this chapter shall have  
15 appropriate levels of monitoring to verify the performance and measure  
16 the energy savings over the life of the project. The department shall  
17 solicit involvement in program planning and implementation from  
18 utilities and other energy conservation suppliers, especially those  
19 that have demonstrated experience in performance-based energy programs.

20 (4) The department shall comply with the requirements of chapter  
21 39.80 RCW when contracting for architectural or engineering services.

22 (5) The department shall recover any costs and expenses it incurs  
23 in providing assistance pursuant to this section, including  
24 reimbursement from third parties participating in conservation  
25 projects. The department shall enter into a written agreement with the  
26 public agency for the recovery of costs.

27 NEW SECTION. **Sec. 31.** A new section is added to chapter 39.35C  
28 RCW to read as follows:

29 (1) Except as provided in subsections (2) and (3) of this section,  
30 each school district shall conduct an energy audit of its facilities.  
31 This energy audit may be conducted by contract or by other arrangement,  
32 including appropriate district staff. Performance-based contracting  
33 shall be the preferred method for implementing and completing energy  
34 audits.

35 (a) For each district facility, the energy consumption surveys  
36 shall be completed no later than December 31, 2001, and the walk-  
37 through surveys shall be completed no later than October 1, 2002. Upon  
38 completion of each walk-through survey, the district shall implement



1 energy conservation maintenance and operation procedures that may be  
2 identified for any district facility. These procedures shall be  
3 implemented as soon as possible, but not later than twelve months after  
4 the walk-through survey.

5 (b) Except as provided in subsection (3) of this section, if a  
6 walk-through survey has identified potentially cost-effective energy  
7 conservation measures, the district shall undertake an investment grade  
8 audit of the facility. Investment grade audits shall be completed no  
9 later than June 30, 2003, and installation of cost-effective  
10 conservation measures recommended in the investment grade audit shall  
11 be completed no later than December 31, 2004.

12 (2) A school district that, after December 31, 1997, has completed  
13 energy audits and implemented cost-effective conservation measures, or  
14 has contracted with an energy service company for energy audits and  
15 conservation measures, is deemed to have met the requirements of this  
16 section for those facilities included in the audits and conservation  
17 measures.

18 (3) A school district that after reasonable efforts and  
19 consultation with the department is unable to obtain a contract with an  
20 energy service company to conduct an investment grade audit or install  
21 cost-effective conservation measures recommended in an investment grade  
22 audit, is exempt from the requirements of subsection (1)(b) of this  
23 section.

24 **Sec. 32.** RCW 43.19.668 and 1993 c 204 s 6 are each amended to read  
25 as follows:

26 The legislature finds and declares that the buildings, facilities,  
27 equipment, and vehicles owned or leased by state government consume  
28 significant amounts of energy and that energy conservation actions,  
29 including energy management systems, to provide for efficient energy  
30 use in these buildings, facilities, equipment, and vehicles will reduce  
31 the costs of state government. In order for the operations of state  
32 government to provide the citizens of this state an example of energy  
33 use efficiency, the legislature further finds and declares that state  
34 government should undertake an aggressive program designed to reduce  
35 energy use in state buildings, facilities, equipment, and vehicles  
36 within a reasonable period of time. The use of appropriate tree  
37 plantings for energy conservation is encouraged as part of this  
38 program.

1       **Sec. 33.** RCW 43.19.669 and 1980 c 172 s 2 are each amended to read  
2 as follows:

3       It is the purpose of RCW 43.19.670 through 43.19.685 to require  
4 energy audits in state-owned buildings, to require energy audits as a  
5 lease condition in all new, renewed, and renegotiated leases of  
6 buildings by the state, to undertake such modifications and  
7 installations as are necessary to maximize the efficient use of energy  
8 in these buildings, including but not limited to energy management  
9 systems, and to establish a policy for the purchase of state vehicles,  
10 equipment, and materials which results in efficient energy use by the  
11 state.

12       For a building that is leased by the state, energy audits and  
13 implementation of cost-effective energy conservation measures are  
14 required only for that portion of the building that is leased by the  
15 state when the state leases less than one hundred percent of the  
16 building. When implementing cost-effective energy conservation  
17 measures in buildings leased by the state, those measures must generate  
18 savings sufficient to finance the building modifications and  
19 installations over a loan period not greater than ten years and allow  
20 repayment during the term of the lease.

21       **Sec. 34.** RCW 43.19.670 and 1982 c 48 s 1 are each amended to read  
22 as follows:

23       As used in RCW 43.19.670 through 43.19.685, the following terms  
24 have the meanings indicated unless the context clearly requires  
25 otherwise.

26       (1) "Energy audit" means a determination of the energy consumption  
27 characteristics of a facility which consists of the following elements:

28       (a) An energy consumption survey which identifies the type, amount,  
29 and rate of energy consumption of the facility and its major energy  
30 systems. This survey shall be made by the agency responsible for the  
31 facility.

32       (b) A walk-through survey which determines appropriate energy  
33 conservation maintenance and operating procedures and indicates the  
34 need, if any, for the acquisition and installation of energy  
35 conservation measures and energy management systems. This survey shall  
36 be made by the agency responsible for the facility if it has  
37 technically qualified personnel available. The director of general

1 administration shall provide technically qualified personnel to the  
2 responsible agency if necessary.

3 (c) (~~(A technical assistance study)~~) An investment grade audit,  
4 which is an intensive engineering analysis of energy conservation and  
5 management measures for the facility, net energy savings, and a cost-  
6 effectiveness determination. This element is required only for those  
7 facilities designated in the (~~(technical assistance study)~~) schedule  
8 adopted under RCW 43.19.680(~~(+3)~~) (2).

9 (2) "Cost-effective energy conservation measures" means energy  
10 conservation measures that the investment grade audit concludes will  
11 generate savings sufficient to finance project loans of not more than  
12 ten years.

13 (3) "Energy conservation measure" means an installation or  
14 modification of an installation in a facility which is primarily  
15 intended to reduce energy consumption or allow the use of an  
16 alternative energy source, including:

17 (a) Insulation of the facility structure and systems within the  
18 facility;

19 (b) Storm windows and doors, multiglazed windows and doors, heat  
20 absorbing or heat reflective glazed and coated windows and door  
21 systems, additional glazing, reductions in glass area, and other window  
22 and door system modifications;

23 (c) Automatic energy control systems;

24 (d) Equipment required to operate variable steam, hydraulic, and  
25 ventilating systems adjusted by automatic energy control systems;

26 (e) Solar space heating or cooling systems, solar electric  
27 generating systems, or any combination thereof;

28 (f) Solar water heating systems;

29 (g) Furnace or utility plant and distribution system modifications  
30 including replacement burners, furnaces, and boilers which  
31 substantially increase the energy efficiency of the heating system;  
32 devices for modifying flue openings which will increase the energy  
33 efficiency of the heating system; electrical or mechanical furnace  
34 ignitions systems which replace standing gas pilot lights; and utility  
35 plant system conversion measures including conversion of existing oil-  
36 and gas-fired boiler installations to alternative energy sources;

37 (h) Caulking and weatherstripping;

38 (i) Replacement or modification of lighting fixtures which increase  
39 the energy efficiency of the lighting system;

1 (j) Energy recovery systems; ~~((and))~~

2 (k) Energy management systems; and

3 (l) Such other measures as the director finds will save a  
4 substantial amount of energy.

5 ~~((+3))~~ (4) "Energy conservation maintenance and operating  
6 procedure" means modification or modifications in the maintenance and  
7 operations of a facility, and any installations within the facility,  
8 which are designed to reduce energy consumption in the facility and  
9 which require no significant expenditure of funds.

10 ~~((+4))~~ (5) "Energy management system" has the definition contained  
11 in RCW 39.35.030.

12 (6) "Energy savings performance contracting" means the process  
13 authorized by chapter 39.35C RCW by which a company contracts with a  
14 state agency to conduct no-cost energy audits, guarantee savings from  
15 energy efficiency, provide financing for energy efficiency  
16 improvements, install or implement energy efficiency improvements, and  
17 agree to be paid for its investment solely from savings resulting from  
18 the energy efficiency improvements installed or implemented.

19 (7) "Energy service company" means a company or contractor  
20 providing energy savings performance contracting services.

21 (8) "Facility" means a building, a group of buildings served by a  
22 central energy distribution system, or components of a central energy  
23 distribution system.

24 ~~((+5))~~ (9) "Implementation plan" means the annual tasks and budget  
25 required to complete all acquisitions and installations necessary to  
26 satisfy the recommendations of the energy audit.

27 **Sec. 35.** RCW 43.19.675 and 1982 c 48 s 2 are each amended to read  
28 as follows:

29 For each state-owned facility, the director of general  
30 administration, ~~((in cooperation with the director of the state energy~~  
31 office)) or the agency responsible for the facility if other than the  
32 department of general administration, shall conduct ~~((, by contract or~~  
33 other arrangement,)) an energy audit ~~((for each state-owned))~~ of that  
34 facility. ~~((All energy audits shall be coordinated with and complement~~  
35 other governmental energy audit programs. The energy audit for each  
36 state-owned facility located on the capitol campus shall be completed  
37 no later than July 1, 1981, and the results and findings of each energy  
38 audit shall be compiled and transmitted to the governor and the

1 ~~legislature no later than October 1, 1981.))~~ This energy audit may be  
2 conducted by contract or by other arrangement, including appropriate  
3 agency staff. Performance-based contracting shall be the preferred  
4 method for implementing and completing energy audits. For ~~((every~~  
5 ~~other))~~ each state-owned facility, the energy consumption surveys shall  
6 be completed no later than October 1, ~~((1982))~~ 2001, and the walk-  
7 through surveys shall be completed no later than July 1, ~~((1983))~~ 2002.

8 **Sec. 36.** RCW 43.19.680 and 1996 c 186 s 506 are each amended to  
9 read as follows:

10 (1) Upon completion of each walk-through survey required by RCW  
11 43.19.675, the director of general administration or the agency  
12 responsible for the facility if other than the department of general  
13 administration shall implement energy conservation maintenance and  
14 operation procedures that may be identified for any state-owned  
15 facility. These procedures shall be implemented as soon as possible  
16 but not later than twelve months after the walk-through survey.

17 (2) ~~((By December 31, 1981, for the capitol campus the director of~~  
18 ~~general administration shall prepare and transmit to the governor and~~  
19 ~~the legislature an implementation plan.))~~ If a walk-through survey has  
20 identified potentially cost-effective energy conservation measures, the  
21 agency responsible for the facility shall undertake an investment grade  
22 audit of the facility. Investment grade audits shall be completed no  
23 later than December 1, 2002. Installation of cost-effective energy  
24 conservation measures recommended in the investment grade audit shall  
25 be completed no later than June 30, 2004.

26 (3) ~~((By December 31, 1983, for all other state-owned facilities,~~  
27 ~~the director of general administration shall prepare and transmit to~~  
28 ~~the governor and the legislature the results of the energy consumption~~  
29 ~~and walk through surveys and a schedule for the conduct of technical~~  
30 ~~assistance studies. This submission shall contain the energy~~  
31 ~~conservation measures planned for installation during the ensuing~~  
32 ~~biennium. Priority considerations for scheduling technical assistance~~  
33 ~~studies shall include but not be limited to a facility's energy~~  
34 ~~efficiency, responsible agency participation, comparative cost and type~~  
35 ~~of fuels, possibility of outside funding, logistical considerations~~  
36 ~~such as possible need to vacate the facility for installation of energy~~  
37 ~~conservation measures, coordination with other planned facility~~  
38 ~~modifications, and the total cost of a facility modification, including~~

1 other work which would have to be done as a result of installing energy  
2 conservation measures. Energy conservation measure acquisitions and  
3 installations shall be scheduled to be twenty five percent complete by  
4 June 30, 1985, or at the end of the capital budget biennium which  
5 includes that date, whichever is later, fifty five percent complete by  
6 June 30, 1989, or at the end of the capital budget biennium which  
7 includes that date, whichever is later, eighty five percent complete by  
8 June 30, 1993, or at the end of the capital budget biennium which  
9 includes that date, whichever is later, and fully complete by June 30,  
10 1995, or at the end of the capital budget biennium which includes that  
11 date, whichever is later. Each state agency shall implement energy  
12 conservation measures with a payback period of twenty four months or  
13 less that have a positive cash flow in the same biennium.))

14 For each biennium until all measures are installed, the director of  
15 general administration shall report to the governor and legislature  
16 installation progress, measures planned for installation during the  
17 ensuing biennium(, and changes, if any, to the technical assistance  
18 study schedule)). This report shall be submitted by December 31,  
19 ((1984)) 2004, or at the end of the following year whichever  
20 immediately precedes the capital budget adoption, and every two years  
21 thereafter until all measures are installed.

22 (4) ((The director of general administration shall adopt rules to  
23 facilitate private investment in energy conservation measures for  
24 state-owned buildings consistent with state law.)) Agencies may  
25 contract with energy service companies as authorized by chapter 39.35C  
26 RCW for energy audits and implementation of cost-effective energy  
27 conservation measures. The department shall provide technically  
28 qualified personnel to the responsible agency upon request. The  
29 department shall recover a fee for this service.

30 **Sec. 37.** RCW 80.28.309 and 1994 c 268 s 4 are each amended to read  
31 as follows:

32 (1) Costs incurred before June 9, 1994, by electrical, gas, or  
33 water companies with respect to energy or water conservation measures  
34 and services intended to improve the efficiency of energy or water end  
35 use shall constitute bondable conservation investment for purposes of  
36 RCW 80.28.005, 80.28.303, 80.28.306, and this section, if:

37 (a) The commission has previously issued a rate order authorizing  
38 the inclusion of such costs in rate base; and

1 (b) The commission authorizes the issuance of conservation bonds  
2 secured by conservation investment assets associated with such costs.

3 (2) If costs incurred before June 9, 1994, or between July 1, 1996,  
4 and May 1, 2001, by electrical, gas, or water companies with respect to  
5 energy or water conservation measures intended to improve the  
6 efficiency of energy or water end use were not made pursuant to a  
7 conservation service tariff and have not previously been considered by  
8 the commission for inclusion in rate base, an electrical, gas, or water  
9 company may apply to the commission for approval of such costs. If the  
10 commission finds that the expenditures are otherwise a bondable  
11 conservation investment, the commission shall by order designate such  
12 expenditures as bondable conservation investment, which shall be  
13 subject to RCW 80.28.005, 80.28.303, 80.28.306, and this section.

14 NEW SECTION. **Sec. 38.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 39.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and takes effect  
21 immediately.

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