
SECOND SUBSTITUTE SENATE BILL 6177

State of Washington**57th Legislature****2001 Regular Session**

By Senate Committee on Ways & Means (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 04/18/01.

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, and 43.19.680;
6 adding new sections to chapter 82.16 RCW; adding a new section to
7 chapter 19.29A RCW; adding a new section to chapter 43.31 RCW; adding
8 a new section to chapter 80.50 RCW; adding a new section to chapter
9 82.04 RCW; adding a new section to chapter 82.12 RCW; adding a new
10 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)(a) Subject to the conditions and limitations in this section,
9 a light and power business or gas distribution business may take a
10 credit against the tax imposed under this chapter for qualifying
11 contributions and billing discounts in each fiscal year that such
12 qualifying contributions are made or billing discounts are given.

13 (b) The amount of the credit for qualifying contributions shall be
14 fifty percent of the dollar value of qualifying contributions that are
15 greater than one hundred five percent of the amount of qualifying
16 contributions made by the business in fiscal year 2000. If no
17 qualifying contributions were made by the business in fiscal year 2000,
18 the amount of the credit shall be fifty percent of the dollar value of
19 all qualifying contributions made by the business in the first fiscal
20 year in which such contributions are made. Thereafter, the amount of
21 the credit shall be fifty percent of the dollar value of all qualifying
22 contributions that are greater than one hundred five percent of the
23 amount of such contributions made by the business in the first fiscal
24 year qualifying contributions were made.

25 (c) The amount of credit for billing discounts shall be fifty
26 percent of the dollar value of the billing discounts that are greater
27 than one hundred five percent of the amount of billing discounts given
28 by the business in fiscal year 2000. If no billing discounts were
29 given by the business in fiscal year 2000, the amount of the credit
30 shall be fifty percent of the dollar value of all billing discounts
31 given by the business in the first fiscal year in which such discounts
32 are given. Thereafter, the amount of the credit shall be fifty percent
33 of the dollar value of all billing discounts that are greater than one
34 hundred five percent of the amount of such discounts given by the
35 business in the first fiscal year billing discounts are given.

36 (3) The fiscal cap shall not exceed one million five hundred
37 thousand dollars in fiscal year 2002, two million five hundred thousand
38 dollars in fiscal year 2003, three million five hundred thousand
39 dollars in fiscal year 2004, and four million dollars in each fiscal

1 year thereafter. By May 1st of each year starting in 2002, the
2 department of community, trade, and economic development shall notify
3 the department of revenue in writing of the grants received in the
4 current fiscal year by each light and power business and gas
5 distribution business.

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

9 (b) Not later than July 1st of each year beginning in 2002,
10 application for credit must be made to the department including but not
11 limited to the following information: Billing discounts given by the
12 applicant in fiscal year 2000; qualifying contributions given by the
13 applicant in the prior fiscal year; the amount of money received in the
14 prior fiscal year from customers for the purpose of assisting other
15 customers; the base credit for the next fiscal year for the applicant;
16 the qualifying contributions anticipated to be given in the next fiscal
17 year; and billing discounts anticipated to be given in the next fiscal
18 year. No credit under this section will be allowed to a light and
19 power business or gas distribution business that does not file the
20 application by July 1st.

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

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

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

33 (6) No credit may be taken for billing discounts made before July
34 1, 2001. Within two weeks of the effective date of this section, the
35 department of community, trade, and economic development shall notify
36 the department of revenue in writing of the grants received in fiscal
37 year 2001 by each light and power business and gas distribution
38 business. Within four weeks of the effective date of this section, the
39 department of revenue shall publish the base credit for each light and

1 power business and gas distribution business for fiscal year 2002.
2 Within eight weeks of the effective date of this section, application
3 to the department must be made showing the information required in
4 subsection (4)(b) of this section. Within twelve weeks of the
5 effective date of this section, the department shall notify each
6 applicant of the amount of credit that may be taken in fiscal year
7 2002.

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

10 (1) Notwithstanding any other provision of law, any county, city,
11 town, municipal corporation, or quasi municipal corporation providing
12 utility services may provide such services at reduced rates for low
13 income senior citizens or other low-income citizens: PROVIDED, That,
14 for the purposes of this section, "low-income senior citizen" or "other
15 low-income citizen" shall be defined by appropriate ordinance or
16 resolution adopted by the governing body of the county, city, town,
17 municipal corporation, or quasi municipal corporation providing the
18 utility services except as provided in subsection (2) of this section.
19 Any reduction in rates granted in whatever manner to low-income senior
20 citizens or other low-income citizens in one part of a service area
21 shall be uniformly extended to low-income senior citizens or other low-
22 income citizens in all other parts of the service area.

23 (2) For purposes of implementing this section by any public utility
24 district, (a) "low-income senior citizen" means a person who is sixty-
25 two years of age or older and whose total income, including that of his
26 or her spouse or cotenant, does not exceed the amount specified in RCW
27 84.36.381(5)(b), (~~as now or hereafter amended~~) and (b) "other low-
28 income citizen" means a person within the defined group established by
29 appropriate ordinance or resolution as provided in subsection (1) of
30 this section whose household income does not exceed the amount
31 specified in RCW 70.164.020(4).

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.29A RCW
33 to read as follows:

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

1 (2) Each electric utility must include with its retail electric
2 customer's regular billing statements, at least quarterly, a voluntary
3 option to purchase qualified renewable energy resources. The option
4 may allow customers to purchase qualified renewable energy resources at
5 fixed or variable rates and for fixed or variable periods of time,
6 including but not limited to monthly, quarterly, or annual purchase
7 agreements. A utility may provide qualified renewable energy resource
8 options through either: (a) Resources it owns or contracts for; or (b)
9 the purchase of credits issued by a clearinghouse or other system by
10 which the utility may secure, for trade or other consideration,
11 verifiable evidence that a second party has a qualified renewable
12 energy resource and that the second party agrees to transfer such
13 evidence exclusively to the benefit of the utility.

14 (3) For the purposes of this section, a "qualified renewable energy
15 resource" means the electricity produced from generation facilities
16 that are fueled by: (a) Wind; (b) solar energy; (c) geothermal energy;
17 (d) landfill gas; (e) wave or tidal action; (f) gas produced during the
18 treatment of wastewater; (g) environmentally qualified hydropower; (h)
19 fuel cells; or (i) biomass energy based on solid organic fuels from
20 wood, forest, or field residues, or dedicated energy crops that do not
21 include wood pieces that have been treated with chemical preservatives
22 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

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

30 (5) The rates, terms, conditions, and customer notification of each
31 utility's option or options offered in accordance with this section
32 must be approved by the governing body of the consumer-owned utility or
33 by the commission for investor-owned utilities. All costs and benefits
34 associated with any option offered by an electric utility under this
35 section must be allocated to the customers who voluntarily choose that
36 option and may not be shifted to any customers who have not chosen such
37 option.

38 (6) Each consumer-owned utility must report annually to the
39 department and each investor-owned utility must report annually to the

1 commission beginning October 1, 2002, until October 1, 2012, describing
2 the option or options it is offering its customers under the
3 requirements of this section, the rate of customer participation, the
4 amount of qualified renewable energy resources purchased by customers,
5 and the amount of utility investments in qualified renewable energy
6 resources. The department and the commission together shall report
7 annually to the legislature, beginning December 1, 2002, until December
8 1, 2012, with the results of the utility reports.

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

11 The provisions of RCW 19.29A.020, 19.29A.030, (~~and~~) section 5,
12 chapter 300, Laws of 1998, and section 4 of this act do not apply to a
13 small utility. However, nothing in this section prohibits the
14 governing body of a small utility from determining the utility should
15 comply with any or all of the provisions of RCW 19.29A.020, 19.29A.030,
16 (~~and~~) section 5, chapter 300, Laws of 1998, and section 4 of this
17 act, which governing bodies are encouraged to do.

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

20 (1) By December 15, 2001, the department of community, trade, and
21 economic development must establish the EnergySmart Washington program.
22 The purpose of the program is to give annual public recognition and
23 awards to individuals, businesses, utilities, government agencies, and
24 other institutions that provide leading examples of efficient use of
25 energy or that have made notable contributions to the development,
26 promotion, and deployment of energy efficiency. The program will
27 provide similar recognition for entities that demonstrate similar
28 achievements with regard to qualified renewable energy resources.

29 (2) In addition, the program will provide for annual awards of
30 certificates of achievement to utilities that develop a portfolio of
31 diverse energy resources, including but not limited to qualified
32 renewable energy resources. The purpose of awarding certificates of
33 achievement is to create an incentive for utilities to act in
34 accordance with state policy favoring a diversity of energy resources
35 and to recognize such achievement as a matter of environmental
36 distinction. A utility that receives a certificate of achievement may

1 publicize the certificate in its advertising, disclosures under chapter
2 19.29A RCW, and other means of publicity and advertising.

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

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Applicant" means any person who makes application for a site
11 certification pursuant to the provisions of this chapter((+)).

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

15 (3) "Person" means an individual, partnership, joint venture,
16 private or public corporation, association, firm, public service
17 company, political subdivision, municipal corporation, government
18 agency, public utility district, or any other entity, public or
19 private, however organized((+)).

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

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

28 (6) "Associated facilities" means storage, transmission, handling,
29 or other related and supporting facilities connecting an energy plant
30 with the existing energy supply, processing, or distribution system,
31 including, but not limited to, communications, controls, mobilizing or
32 maintenance equipment, instrumentation, and other types of ancillary
33 transmission equipment, off-line storage or venting required for
34 efficient operation or safety of the transmission system and overhead,
35 and surface or subsurface lines of physical access for the inspection,
36 maintenance, and safe operations of the transmission facility and new
37 transmission lines constructed to operate at nominal voltages in excess
38 of 200,000 volts to connect a thermal power plant to the northwest

1 power grid: PROVIDED, That common carrier railroads or motor vehicles
2 shall not be included((?)).

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

5 (a) Crude or refined petroleum or liquid petroleum product
6 transmission pipeline of the following dimensions: A pipeline larger
7 than six inches minimum inside diameter between valves for the
8 transmission of these products with a total length of at least fifteen
9 miles;

10 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas
11 transmission pipeline of the following dimensions: A pipeline larger
12 than fourteen inches minimum inside diameter between valves, for the
13 transmission of these products, with a total length of at least fifteen
14 miles for the purpose of delivering gas to a distribution facility,
15 except an interstate natural gas pipeline regulated by the United
16 States federal power commission((?)).

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

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

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

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

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

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

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

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

1 (14) "Energy plant" means the following facilities together with
2 their associated facilities:

3 (a) Any stationary thermal power plant with generating capacity of
4 ~~((two))~~ three hundred fifty thousand kilowatts or more, measured using
5 maximum continuous electric generating capacity, less minimum auxiliary
6 load, at average ambient temperature and pressure, and floating thermal
7 power plants of ~~((fifty))~~ one hundred thousand kilowatts or more,
8 including associated facilities. For the purposes of this subsection,
9 "floating thermal power plants" means a thermal power plant that is
10 suspended on the surface of water by means of a barge, vessel, or other
11 floating platform;

12 (b) Facilities which will have the capacity to receive liquified
13 natural gas in the equivalent of more than one hundred million standard
14 cubic feet of natural gas per day, which has been transported over
15 marine waters;

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

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

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

28 (15) "Land use plan" means a comprehensive plan or land use element
29 thereof adopted by a unit of local government pursuant to chapters
30 35.63, 35A.63, or 36.70 RCW~~((+))~~.

31 (16) "Zoning ordinance" means an ordinance of a unit of local
32 government regulating the use of land and adopted pursuant to chapters
33 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

34 (17) "Renewable resource" means: (a) Wind; (b) solar energy; (c)
35 geothermal energy; (d) landfill gas; (e) run of the river or run of the
36 canal hydropower facilities that are not responsible for obstructing
37 the passage of anadromous fish; or (f) biomass energy based on solid
38 organic fuels from wood, forest, or field residues, or dedicated energy
39 crops that do not include wood pieces that have been treated with

1 chemical preservatives such as creosote, pentachlorophenol, or copper-
2 chrome-arsenic.

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

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

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

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

21 (2) The provisions of this chapter apply to the construction,
22 reconstruction, or enlargement of a new or existing energy facility
23 that exclusively uses renewable resources and chooses to receive
24 certification under this chapter, regardless of the generating capacity
25 of the project.

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

30 ~~((+3))~~ (4) Applications for certification of energy facilities
31 made prior to July 15, 1977, shall continue to be governed by the
32 applicable provisions of law in effect on the day immediately preceding
33 July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which
34 shall apply to such prior applications and to site certifications
35 prospectively from July 15, 1977.

1 (~~(4)~~) (5) Applications for certification shall be upon forms
2 prescribed by the council and shall be supported by such information
3 and technical studies as the council may require.

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

6 (1) There is created and established the energy facility site
7 evaluation council.

8 (2)(a) The (~~(chairman)~~) chair of the council shall be appointed by
9 the governor with the advice and consent of the senate, shall have a
10 vote on matters before the council, shall serve for a term coextensive
11 with the term of the governor, and is removable for cause. The
12 (~~(chairman)~~) chair may designate a member of the council to serve as
13 acting (~~(chairman)~~) chair in the event of the (~~(chairman's)~~) chair's
14 absence. The (~~(chairman)~~) chair is a "state employee" for the purposes
15 of chapter 42.52 RCW and shall receive a salary as determined under RCW
16 43.03.040. As applicable, when attending meetings of the council,
17 members may receive reimbursement for travel expenses in accordance
18 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
19 under RCW 43.03.250.

20 (b) The (~~(chairman)~~) chair or a designee shall execute all official
21 documents, contracts, and other materials on behalf of the council.
22 The Washington state department of community, trade, and economic
23 development shall provide all administrative and staff support for the
24 council. The director of the department of community, trade, and
25 economic development has supervisory authority over the staff of the
26 council and shall employ such personnel as are necessary to implement
27 this chapter. Not more than three such employees may be exempt from
28 chapter 41.06 RCW.

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

32 (a) Department of ecology;

33 (b) Department of fish and wildlife;

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

35 ~~(d) Military department;~~

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

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

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

1 ~~(h) Department of agriculture;~~
2 ~~(i) Department of transportation).~~

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

- 7 (a) Department of agriculture;
8 (b) Department of transportation;
9 (c) Military department; and
10 (d) Department of health.

11 (5) The appropriate county legislative authority of every county
12 wherein an application for a proposed site is filed shall appoint a
13 member or designee as a voting member to the council. The member or
14 designee so appointed shall sit with the council only at such times as
15 the council considers the proposed site for the county which he or she
16 represents, and such member or designee shall serve until there has
17 been a final acceptance or rejection of the proposed site.

18 ~~((+5))~~ (6) The city legislative authority of every city within
19 whose corporate limits an energy plant is proposed to be located shall
20 appoint a member or designee as a voting member to the council. The
21 member or designee so appointed shall sit with the council only at such
22 times as the council considers the proposed site for the city which he
23 or she represents, and such member or designee shall serve until there
24 has been a final acceptance or rejection of the proposed site.

25 ~~((+6))~~ (7) For any port district wherein an application for a
26 proposed port facility is filed subject to this chapter, the port
27 district shall appoint a member or designee as a nonvoting member to
28 the council. The member or designee so appointed shall sit with the
29 council only at such times as the council considers the proposed site
30 for the port district which he or she represents, and such member or
31 designee shall serve until there has been a final acceptance or
32 rejection of the proposed site. The provisions of this subsection
33 shall not apply if the port district is the applicant, either singly or
34 in partnership or association with any other person.

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

37 The council shall have the following powers:

- 1 (1) To adopt, promulgate, amend, or rescind suitable rules and
2 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
3 of this chapter, and the policies and practices of the council in
4 connection therewith;
- 5 (2) To develop and apply environmental and ecological guidelines in
6 relation to the type, design, location, construction, and operational
7 conditions of certification of energy facilities subject to this
8 chapter;
- 9 (3) To establish rules of practice for the conduct of public
10 hearings pursuant to the provisions of the Administrative Procedure
11 Act, as found in chapter 34.05 RCW;
- 12 (4) To prescribe the form, content, and necessary supporting
13 documentation for site certification;
- 14 (5) To receive applications for energy facility locations and to
15 investigate the sufficiency thereof;
- 16 (6) To make and contract, when applicable, for independent studies
17 of sites proposed by the applicant;
- 18 (7) To conduct hearings on the proposed location of the energy
19 facilities;
- 20 (8) To prepare written reports to the governor which shall include:
21 (a) A statement indicating whether the application is in compliance
22 with the council's guidelines, (b) criteria specific to the site and
23 transmission line routing, (c) a council recommendation as to the
24 disposition of the application, and (d) a draft certification agreement
25 when the council recommends approval of the application;
- 26 (9) To prescribe the means for monitoring of the effects arising
27 from the construction and the operation of energy facilities to assure
28 continued compliance with terms of certification and/or permits issued
29 by the council pursuant to chapter 90.48 RCW or subsection (12) of this
30 section: PROVIDED, That any on-site inspection required by the council
31 shall be performed by other state agencies pursuant to interagency
32 agreement: PROVIDED FURTHER, That the council (~~shall~~) may retain
33 authority for determining compliance relative to monitoring;
- 34 (10) To integrate its site evaluation activity with activities of
35 federal agencies having jurisdiction in such matters to avoid
36 unnecessary duplication;
- 37 (11) To present state concerns and interests to other states,
38 regional organizations, and the federal government on the location,
39 construction, and operation of any energy facility which may affect the

1 environment, health, or safety of the citizens of the state of
2 Washington;

3 (12) To issue permits in compliance with applicable provisions of
4 the federally approved state implementation plan adopted in accordance
5 with the Federal Clean Air Act, as now existing or hereafter amended,
6 for the new construction, reconstruction, or enlargement or operation
7 of energy facilities: PROVIDED, That such permits shall become
8 effective only if the governor approves an application for
9 certification and executes a certification agreement pursuant to this
10 chapter: AND PROVIDED FURTHER, That all such permits be conditioned
11 upon compliance with all provisions of the federally approved state
12 implementation plan which apply to energy facilities covered within the
13 provisions of this chapter; and

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

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

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

23 (2) Subsequent to the informational public hearing, the council
24 ((must)) shall conduct a public hearing to determine ((at the initial
25 public hearing)) whether or not the proposed site is consistent and in
26 compliance with county or regional land use plans or zoning ordinances.
27 If it is determined that the proposed site does conform with existing
28 land use plans or zoning ordinances in effect as of the date of the
29 application, the county or regional planning authority shall not
30 thereafter change such land use plans or zoning ordinances so as to
31 affect the proposed site.

32 (3) Prior to the issuance of a council recommendation to the
33 governor under RCW 80.50.100 a public hearing, conducted as an
34 adjudicative proceeding under chapter 34.05 RCW, the Administrative
35 Procedure Act, shall be held. At such public hearing any person shall
36 be entitled to be heard in support of or in opposition to the
37 application for certification.

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

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

5 (1) The council shall report to the governor its recommendations as
6 to the approval or rejection of an application for certification within
7 twelve months of receipt by the council of such an application, or such
8 later time as is mutually agreed by the council and the applicant.
9 Pursuant to RCW 34.05.476, the council's report to the governor shall
10 be based on the administrative record developed during the public
11 hearing held under RCW 80.50.090(3), along with the environmental
12 impact statement prepared under RCW 43.21C.030, and relevant
13 information presented at other public hearings held by the council
14 under this chapter. If the council recommends approval of an
15 application for certification, it shall also submit a draft
16 certification agreement with the report. The council shall include
17 conditions in the draft certification agreement to implement the
18 provisions of this chapter, including, but not limited to, conditions
19 to protect state or local governmental or community interests affected
20 by the construction or operation of the energy facility, and conditions
21 designed to recognize the purpose of laws or ordinances, or rules or
22 regulations promulgated thereunder, that are preempted or superseded
23 pursuant to RCW 80.50.110 as now or hereafter amended.

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

26 (a) Approve the application and execute the draft certification
27 agreement; or

28 (b) Reject the application; or

29 (c) Direct the council to reconsider certain aspects of the draft
30 certification agreement.

31 The council shall reconsider such aspects of the draft
32 certification agreement by reviewing the existing record of the
33 application or, as necessary, by reopening the adjudicative proceeding
34 for the purposes of receiving additional evidence. Such
35 reconsideration shall be conducted expeditiously. The council shall
36 resubmit the draft certification to the governor incorporating any
37 amendments deemed necessary upon reconsideration. Within sixty days of
38 receipt of such draft certification agreement, the governor shall

1 either approve the application and execute the certification agreement
2 or reject the application. The certification agreement shall be
3 binding upon execution by the governor and the applicant.

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

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

10 There is hereby created the joint committee on energy ~~((and~~
11 ~~utilities))~~ supply of the legislature of the state of Washington.

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

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

16 (1) The president of the senate shall ~~((nominate))~~ appoint four
17 members from the ~~((energy and utilities))~~ senate to serve on the
18 committee, including the ~~((chairman,))~~ chair of the committee
19 responsible for energy issues. Two members ~~((being))~~ from each major
20 political party~~((, to serve on the committee, and shall submit the list~~
21 ~~of nominees to the senate for confirmation. Upon confirmation, the~~
22 ~~senators shall be deemed installed as members))~~ must be appointed.

23 (2) The speaker or co-speakers of the house of representatives
24 shall nominate four members from the ~~((energy and utilities))~~ house of
25 representatives to serve on the committee, including the ~~((chairman,))~~
26 chair or co-chairs of the committee responsible for energy issues. Two
27 members ~~((being))~~ from each major political party~~((, to serve on the~~
28 ~~committee, and shall submit the list of nominees to the house of~~
29 ~~representatives for confirmation. Upon confirmation, the~~
30 ~~representatives shall be deemed installed as members. The chairmen of~~
31 ~~the senate and house energy and utilities committees shall alternately~~
32 ~~serve as chairman for one year terms. The chairman of the house~~
33 ~~committee shall serve as the initial chairman. The chairman may~~
34 ~~designate another committee member to serve as chairman in his or her~~
35 ~~absence))~~ must be appointed.

36 (3) The committee shall elect a chair and a vice-chair. The chair
37 shall be a member of the house of representatives in even-numbered

1 years and a member of the senate in odd-numbered years. In the case of
2 a tie in the membership of the house of representatives in an even-
3 numbered year, the committee shall elect co-chairs from the house of
4 representatives in that year.

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

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

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

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

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

24 (2) Effective July 1, 2004, a credit is allowed against the tax due
25 under this chapter to a direct service industrial customer who
26 purchases natural or manufactured gas from a gas distribution business
27 subject to the public utility tax under chapter 82.16 RCW. The credit
28 is equal to the value of natural or manufactured gas purchased from a
29 gas distribution business that is used to generate electricity at the
30 facility and consumed by the direct service industrial customer
31 multiplied by the rate in effect for the public utility tax on gas
32 distribution businesses under RCW 82.16.020. This credit may be used
33 each reporting period for sixty months following the first month
34 natural or manufactured gas was purchased from a gas distribution
35 business by a direct service industrial customer who constructs a
36 facility.

37 (3) For any direct service industrial customer electing between
38 January 1, 2000, and October 1, 2001, to have the Bonneville power

1 administration repurchase or remarket power not delivered to the
2 company for use in its operations, this credit is available only to a
3 person who uses resale proceeds or agrees with the Bonneville power
4 administration to use net remarketing proceeds for the following
5 purposes:

6 (a) Expenditures or costs related to curtailing production,
7 including at a minimum compensation, benefits, other expenditures
8 related to employee layoffs, maintaining additional employees not
9 required for operations at the reduced level, or job reassignments as
10 a result of reduced operations; and

11 (b) Expenditures or costs incurred related to plans for securing a
12 future power supply and enhancement of operations at facilities located
13 in Washington, including expenses related to new nonfederal power
14 sources and expenses to upgrade facilities to achieve energy
15 conservation, operating efficiencies, environmental benefits, or
16 preserving jobs.

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

22 (5) Application for credit shall be made by the direct service
23 industrial consumer before the first purchase of natural or
24 manufactured gas. The application shall be in a form and manner
25 prescribed by the department and shall include but is not limited to
26 information regarding the location of the facility, the projected date
27 of first purchase of natural or manufactured gas to generate
28 electricity at the facility, the date construction is projected to
29 begin or did begin, the applicant's average annual employment in the
30 state for the six calendar years immediately preceding the year in
31 which the application is made, and affirm the applicant's status as a
32 direct service industrial customer. The department shall rule on the
33 application within thirty days of receipt.

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

38 (7) All or part of the credit shall be disallowed and must be paid
39 if the average of the direct service industrial customer's average

1 annual employment for the five calendar years subsequent to the
 2 calendar year containing the first month of purchase of natural or
 3 manufactured gas to generate electricity at a facility is less than the
 4 six-year average annual employment stated on the application for credit
 5 under this section. The direct service industrial customer will
 6 certify to the department by June 1st of the sixth calendar year
 7 following the calendar year in which the month of first purchase of gas
 8 occurs the average annual employment for each of the five prior
 9 calendar years. All or part of the credit that shall be disallowed and
 10 must be paid is commensurate with the decrease in the five-year average
 11 of average annual employment as follows:

<u>Decrease in Average Annual</u>	<u>% of Credit to be Paid</u>
<u>Employment Over</u>	
<u>Five-Year Period</u>	
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

20 (8)(a) The direct service industrial customer shall begin paying
 21 the credit that is disallowed and is to be paid in the sixth calendar
 22 year following the calendar year in which the month following the month
 23 of first purchase of natural or manufactured gas to generate
 24 electricity at the facility occurs. The first payment will be due on
 25 or before December 31st with subsequent annual payments due on or
 26 before December 31st of the following four years according to the
 27 following schedule:

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

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

36 (c) Interest shall not be charged on the credit that is disallowed
 37 for the sixty-month period the credit may be taken, although all other

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

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

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

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

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

20 (a) "Direct service industrial customer" means a person who is an
21 industrial customer that contracts for the purchase of power from the
22 Bonneville power administration for direct consumption as of the
23 effective date of this section. "Direct service industrial customer"
24 includes a person who is a subsidiary that is more than fifty percent
25 owned by a direct service industrial customer and who receives power
26 from the Bonneville power administration pursuant to the parent's
27 contract for power.

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

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

35 (2) Effective July 1, 2004, the tax levied in RCW 82.12.022 on the
36 first sixty months' use of natural or manufactured gas by a direct
37 service industrial customer that owns a facility shall be deferred.
38 This deferral is limited to the tax on natural or manufactured gas that

1 is used or consumed to generate electricity at the facility and
2 consumed by the direct service industrial customer.

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

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

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

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

26 (5) Application for deferral shall be made by the direct service
27 industrial customer before the first use of natural or manufactured
28 gas. The application shall be in a form and manner prescribed by the
29 department and shall include but is not limited to information
30 regarding the location of the facility, the projected date of first use
31 of natural or manufactured gas to generate electricity at the facility,
32 the date construction is projected to begin or did begin, the
33 applicant's average annual employment in the state for the six calendar
34 years immediately preceding the year in which the application is made,
35 and shall affirm the applicant's status as a direct service industrial
36 customer. The department shall rule on the application within thirty
37 days of receipt.

38 (6)(a) The direct service industrial customer shall begin paying
39 the deferred tax in the sixth calendar year following the calendar year

1 in which the month of first use of natural or manufactured gas to
2 generate electricity at the facility occurs. The first payment will be
3 due on or before December 31st with subsequent annual payments due on
4 or before December 31st of the following four years according to the
5 following schedule:

6	<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
7	1	10%
8	2	15%
9	3	20%
10	4	25%
11	5	30%

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

14 (c) Interest shall not be charged on the tax deferred under this
15 section for the period of deferral, although all other penalties and
16 interest applicable to delinquent excise taxes may be assessed and
17 imposed. The debt for deferred tax will not be extinguished by
18 insolvency or other failure of the direct service industrial customer.
19 Transfer of ownership of the facility does not affect deferral
20 eligibility. However, the deferral is available to the successor only
21 if the eligibility conditions of this section are met.

22 (7)(a) If the average of the direct service industrial customer's
23 average annual employment for the five calendar years subsequent to the
24 calendar year containing the first month of use of natural or
25 manufactured gas to generate electricity at a facility is equal to or
26 exceeds the six-year average annual employment stated on the
27 application for deferral under this section, the tax deferred need not
28 be paid. The direct service industrial customer shall certify to the
29 department by June 1st of the sixth calendar year following the
30 calendar year in which the month of first use of gas occurs the average
31 annual employment for each of the five prior calendar years.

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

36	<u>Decrease in Average Annual</u>	
37	<u>Employment Over</u>	<u>% of Deferred</u>
38	<u>Five-Year Period</u>	<u>Tax to be Paid</u>

1	Less than 10%	10%
2	10% or more but less than 25%	25%
3	25% or more but less than 50%	50%
4	50% or more but less than 75%	75%
5	75% or more	100%

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

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

12 (9) A person claiming this deferral shall supply to the department
13 quarterly reports containing information necessary to document the
14 total volume of natural or manufactured gas purchased in the quarter,
15 the value of that total volume, and the percentage of the total volume
16 used to generate electricity at the facility.

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

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

21 (a) "Direct service industrial customer" means a person who is an
22 industrial customer that contracts for the purchase of power from the
23 Bonneville power administration for direct consumption as of the
24 effective date of this section. "Direct service industrial customer"
25 includes a person who is a subsidiary that is more than fifty percent
26 owned by a direct service industrial customer and who receives power
27 from the Bonneville power administration pursuant to the parent's
28 contract for power.

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

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

34 (2) Effective July 1, 2004, a credit is allowed against the tax due
35 under this chapter on sales of electricity made from a facility to a
36 direct service industrial customer if the contract for sale of
37 electricity to a direct service industrial customer contains the
38 following terms:

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

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

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

9 (3) The credit is equal to the gross proceeds from the sale of the
10 electricity made to and consumed by a direct service industrial
11 customer multiplied by the rate in effect at the time of the sale for
12 the public utility tax on light and power businesses under RCW
13 82.16.020. The credit may be used each reporting period for sixty
14 months following the first month electricity is sold from a facility to
15 a direct service industrial customer. Credit under this section is
16 limited to the amount of tax imposed under this chapter. Refunds shall
17 not be given in place of credits and credits may not be carried over to
18 subsequent calendar years.

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

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

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

37 (5) Subsection (4) of this section may not be construed to
38 disqualify a direct service industrial customer that uses resale
39 proceeds or that agrees with the Bonneville power administration to use

1 net remarketing proceeds for additional purposes beyond those specified
2 in subsection (4) of this section.

3 (6) Application for credit shall be made before the first sale of
4 electricity from a facility to a direct service industrial customer.
5 The application shall be in a form and manner prescribed by the
6 department and shall include but is not limited to information
7 regarding the location of the facility, identification of the direct
8 service industrial customer who will receive electricity from the
9 facility, the projected date of the first sale of electricity to a
10 direct service industrial customer, the date construction is projected
11 to begin or did begin, and the average annual employment in the state
12 of the direct service industrial customer who will receive electricity
13 from the facility for the six calendar years immediately preceding the
14 year in which the application is made. A copy of the contract for sale
15 of electricity must be attached to the application. The department
16 shall rule on the application within thirty days of receipt.

17 (7) All or part of the credit shall be disallowed and must be paid
18 if the average of the direct service industrial customer's average
19 annual employment for the five calendar years subsequent to the
20 calendar year containing the first month of sale of electricity from a
21 facility to a direct service industrial customer is less than the six-
22 year average annual employment stated on the application for credit
23 under this section. The direct service industrial customer shall
24 certify to the department and to the facility by June 1st of the sixth
25 calendar year following the calendar year in which the month of first
26 sale occurs the average annual employment for each of the five prior
27 calendar years. All or part of the credit that shall be disallowed and
28 must be paid is commensurate with the decrease in the five-year average
29 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%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

1 (8)(a) Payments on credit that is disallowed shall begin in the
2 sixth calendar year following the calendar year in which the month
3 following the first month of sale of electricity from a facility to a
4 direct service industrial customer occurs. The first payment will be
5 due on or before December 31st with subsequent annual payments due on
6 or before December 31st of the following four years according to the
7 schedule in this subsection.

8	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
9	1	10%
10	2	15%
11	3	20%
12	4	25%
13	5	30%

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

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

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

27 NEW SECTION. Sec. 19. A new section is added to chapter 82.32 RCW
28 to read as follows:

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

36 (2) Credits and deferred tax are available on a first come basis.
37 The department shall disallow any credits or deferred tax, or portion

1 thereof, that would cause the total amount of credits taken and
2 deferred taxes claimed to exceed the fiscal year cap or to exceed the
3 per person fiscal year cap. If the fiscal cap is reached or exceeded
4 the department shall notify those persons who have approved
5 applications under sections 16 through 18 of this act that no more
6 credits may be taken or tax deferred during the remainder of the fiscal
7 year. In addition, the department shall provide written notice to any
8 person who has taken any tax credits or claimed any deferred tax in
9 excess of the fiscal year cap. The notice shall indicate the amount of
10 tax due and shall provide that the tax be paid within thirty days from
11 the date of such notice.

12 (3) No portion of an application for credit or deferral disallowed
13 under this section may be carried back or carried forward nor may taxes
14 ineligible for credit or deferral due to the fiscal cap having been
15 reached or exceeded be carried forward or carried backward.

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

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

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

23 (2) "Major public energy project" means: (a) A nuclear power plant
24 ((or installation capable, or intended to be capable, of generating
25 electricity in an amount greater than two hundred fifty megawatts,
26 measured using maximum continuous electric generating capacity, less
27 minimum auxiliary load, at average ambient temperature and pressure.
28 Where two or more such plants are located within the same geographic
29 site, each plant shall be considered a major public energy project. An
30 addition to an existing facility is not deemed to be a major energy
31 project unless the addition itself is capable, or intended to be
32 capable, of generating electricity in an amount greater than two
33 hundred fifty megawatts)); (b) any energy project where the total
34 amount of bonds requested by one or more public agencies for the cost
35 of construction or cost of acquisition will exceed one billion dollars;
36 or (c) any power plant capable, or intended to be capable, of
37 generating electricity in an amount greater than seven hundred
38 megawatts, measured using maximum continuous electric generating

1 capacity, less minimum auxiliary load, at average ambient temperature
2 and pressure. Where two or more plants will be located within the same
3 geographic site, or funded by the same bonds, the combined total
4 generating capacity shall be used to determine whether the project is
5 a major public energy project. A project which is under construction
6 on July 1, 1982, shall not be considered a major public energy project
7 unless the official agency budget or estimate for total construction
8 costs for the project as of July 1, 1982, is more than two hundred
9 percent of the first official estimate of total construction costs as
10 specified in the senate energy and utilities committee WPPSS inquiry
11 report, volume one, January 12, 1981, and unless, as of July 1, 1982,
12 the projected remaining cost of construction for that project exceeds
13 two hundred million dollars.

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

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

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

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

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

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

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

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

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

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

10 (2) At the end of the thirty-day period, the public agency must
11 conduct a public hearing on the project under consideration and the
12 cost-effectiveness study. Notice of the public hearing must provide at
13 least the following information:

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

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

17 (c) If the bond issuance is intended to finance the acquisition of
18 all or a portion of the project, the anticipated total cost of the
19 acquisition of the project;

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

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

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

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

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

31 (3) For the purposes of this section, a "large public energy
32 project that is not subject to the voter approval requirements of this
33 chapter" means a nonnuclear plant or installation capable, or intended
34 to be capable, of generating electricity in an amount greater than two
35 hundred fifty megawatts, measured using maximum continuous electric
36 generating capacity, less minimum auxiliary load, at average ambient
37 temperature and pressure. Where two or more such plants are located
38 within the same geographic site, each plant is considered a large
39 public energy project. An addition to an existing facility is not a

1 large public energy project unless the addition itself is capable, or
2 intended to be capable, of generating electricity in an amount greater
3 than two hundred fifty megawatts.

4 NEW SECTION. **Sec. 22.** A new section is added to chapter 82.34 RCW
5 to read as follows:

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

7 (a) "Qualifying facility" means an air pollution control facility
8 as that term is defined in RCW 82.34.010(1)(a) to be installed or
9 acquired for a thermal electric peaking plant with a capacity of less
10 than one hundred megawatts and which is approved pursuant to the
11 Washington clean air act, chapter 70.94 RCW.

12 (b) "Thermal electric peaking plant" means a natural gas-fired
13 thermal electric generating facility operated by a light and power
14 business and placed into service between January 1, 1978, and December
15 31, 1984, and that is registered for the calendar year 2000 pursuant to
16 RCW 70.94.151.

17 (c) "Light and power business" has the same meaning as in RCW
18 82.16.010.

19 (2) A light and power business is exempt from sales tax on the
20 installation or acquisition of up to two qualifying facilities after
21 January 1, 2001, as provided in this section. Upon written request of
22 a light and power business to which the approval issued under chapter
23 70.94 RCW is attached, the department shall make a determination as to
24 whether a plant is a thermal electric peaking plant acquiring or
25 installing a qualifying facility eligible under this section. The
26 department shall consult with the department of community, trade, and
27 economic development and the department of ecology in making the
28 determination. If the determination is in the affirmative, the
29 department shall issue the light and power business a sales and use tax
30 exemption certificate in a form and manner as deemed appropriate by the
31 department.

32 (3) The charges for installation or acquisition of a qualifying
33 facility by the holder of the certificate are exempt from sales tax
34 imposed under chapter 82.08 RCW and use tax imposed under chapter 82.12
35 RCW. The purchaser must provide the seller with a copy of the sales
36 and use tax exemption certificate. The seller shall retain a copy of
37 the certificate for the seller's files.

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

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

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

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

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

13 (c) Conservation programs originally established in the 1970s and
14 1980s can be improved or updated. New programs drawing on recently
15 developed technologies, including demand-side energy management
16 systems, can materially increase the efficiency of energy use by the
17 public sector.

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

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

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

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

30 The legislature hereby finds:

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

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

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

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

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

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

16 For the purposes of this chapter the following words and phrases
17 shall have the following meanings unless the context clearly requires
18 otherwise:

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

22 (2) "Department" means the state department of general
23 administration.

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

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

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

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

33 (7) "Energy management system" means a program, energy efficiency
34 equipment, technology, device, or other measure including, but not
35 limited to, a management, educational, or promotional program, smart
36 appliance, meter reading system that provides energy information
37 capability, computer software or hardware, communications equipment or
38 hardware, thermostat or other control equipment, together with related

1 administrative or operational programs, that allows identification and
2 management of opportunities for improvement in the efficiency of energy
3 use, including but not limited to a measure that allows:

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

6 (b) Interactive communication between energy consumers and their
7 energy suppliers;

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

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

11 (8) "Life-cycle cost" means the initial cost and cost of operation
12 of a major facility over its economic life. This shall be calculated
13 as the initial cost plus the operation, maintenance, and energy costs
14 over its economic life, reflecting anticipated increases in these costs
15 discounted to present value at the current rate for borrowing public
16 funds, as determined by the office of financial management. The energy
17 cost projections used shall be those provided by the department. The
18 department shall update these projections at least every two years.

19 ~~((+8))~~ (9) "Life-cycle cost analysis" includes, but is not limited
20 to, the following elements:

21 (a) The coordination and positioning of a major facility on its
22 physical site;

23 (b) The amount and type of fenestration employed in a major
24 facility;

25 (c) The amount of insulation incorporated into the design of a
26 major facility;

27 (d) The variable occupancy and operating conditions of a major
28 facility; and

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

30 ~~((+9))~~ (10) "Energy systems" means all utilities, including, but
31 not limited to, heating, air-conditioning, ventilating, lighting, and
32 the supplying of domestic hot water.

33 ~~((+10))~~ (11) "Energy-consumption analysis" means the evaluation of
34 all energy systems and components by demand and type of energy
35 including the internal energy load imposed on a major facility by its
36 occupants, equipment, and components, and the external energy load
37 imposed on a major facility by the climatic conditions of its location.
38 An energy-consumption analysis of the operation of energy systems of a

1 major facility shall include, but not be limited to, the following
2 elements:

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

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

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

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

17 (~~(11)~~) (12) "Renewable energy systems" means methods of facility
18 design and construction and types of equipment for the utilization of
19 renewable energy sources including, but not limited to, hydroelectric
20 power, active or passive solar space heating or cooling, domestic solar
21 water heating, windmills, waste heat, biomass and/or refuse-derived
22 fuels, photovoltaic devices, and geothermal energy.

23 (~~(12)~~) (13) "Cogeneration" means the sequential generation of two
24 or more forms of energy from a common fuel or energy source. Where
25 these forms are electricity and thermal energy, then the operating and
26 efficiency standards established by 18 C.F.R. Sec. 292.205 and the
27 definitions established by 18 C.F.R. 292.202 (c) through (m) as of July
28 28, 1991, shall apply.

29 (~~(13)~~) (14) "Selected buildings" means educational, office,
30 residential care, and correctional facilities that are designed to
31 comply with the design standards analyzed and recommended by the
32 department.

33 (~~(14)~~) (15) "Design standards" means the heating, air-
34 conditioning, ventilating, and renewable resource systems identified,
35 analyzed, and recommended by the department as providing an efficient
36 energy system or systems based on the economic life of the selected
37 buildings.

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

3 The department, in consultation with affected public agencies,
4 shall develop and issue guidelines for administering this chapter. The
5 purpose of the guidelines is to define a procedure and method for
6 performance of life-cycle cost analysis to promote the selection of
7 low-life-cycle cost alternatives. At a minimum, the guidelines must
8 contain provisions that:

9 (1) Address energy considerations during the planning phase of the
10 project;

11 (2) Identify energy components and system alternatives including
12 energy management systems, renewable energy systems, and cogeneration
13 applications prior to commencing the energy consumption analysis;

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

17 (4) Establish times during the design process for preparation,
18 review, and approval or disapproval of the life-cycle cost analysis;

19 (5) Specify the assumptions to be used for escalation and inflation
20 rates, equipment service lives, economic building lives, and
21 maintenance costs;

22 (6) Determine life-cycle cost analysis format and submittal
23 requirements to meet the provisions of chapter 201, Laws of 1991;

24 (7) Provide for review and approval of life-cycle cost analysis.

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

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

29 (1) "Energy equipment and services" means energy management systems
30 and any equipment, materials, or supplies that are expected, upon
31 installation, to reduce the energy use or energy cost of an existing
32 building or facility, and the services associated with the equipment,
33 materials, or supplies, including but not limited to design,
34 engineering, financing, installation, project management, guarantees,
35 operations, and maintenance.

36 (2) "Energy management system" has the definition provided in RCW
37 39.35.030.

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

1 (~~(3)~~) (4) "Performance-based contract" means one or more
2 contracts for energy equipment and services between a municipality and
3 any other persons or entities, if the payment obligation for each year
4 under the contract, including the year of installation, is either: (a)
5 Set as a percentage of the annual energy cost savings attributable
6 under the contract to the energy equipment and services; or (b)
7 guaranteed by the other persons or entities to be less than the annual
8 energy cost savings attributable under the contract to the energy
9 equipment and services. Such guarantee shall be, at the option of the
10 municipality, a bond or insurance policy, or some other guarantee
11 determined sufficient by the municipality to provide a level of
12 assurance similar to the level provided by a bond or insurance policy.

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

15 The state department of general administration shall maintain a
16 registry of energy service contractors and provide assistance to
17 municipalities in identifying available performance-based contracting
18 services.

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

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

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

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

32 (3) "Cost-effective" means that the present value to a state agency
33 or school district of the energy reasonably expected to be saved or
34 produced by a facility, activity, measure, or piece of equipment over
35 its useful life, including any compensation received from a utility or
36 the Bonneville power administration, is greater than the net present
37 value of the costs of implementing, maintaining, and operating such

1 facility, activity, measure, or piece of equipment over its useful
2 life, when discounted at the cost of public borrowing.

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

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

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

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

10 (~~(7)~~) (8) "Department" means the state department of general
11 administration.

12 (~~(8)~~) (9) "Performance-based contracting" means contracts for
13 which payment is conditional on achieving contractually specified
14 energy savings.

15 (~~(9)~~) (10) "Public agency" means every state office, officer,
16 board, commission, committee, bureau, department, and all political
17 subdivisions of the state.

18 (~~(10)~~) (11) "Public facility" means a building or structure, or
19 a group of buildings or structures at a single site, owned by a state
20 agency or school district.

21 (~~(11)~~) (12) "State agency" means every state office or
22 department, whether elective or appointive, state institutions of
23 higher education, and all boards, commissions, or divisions of state
24 government, however designated.

25 (~~(12)~~) (13) "State facility" means a building or structure, or a
26 group of buildings or structures at a single site, owned by a state
27 agency.

28 (~~(13)~~) (14) "Utility" means privately or publicly owned electric
29 and gas utilities, electric cooperatives and mutuals, whether located
30 within or without Washington state.

31 (~~(14)~~) (15) "Local utility" means the utility or utilities in
32 whose service territory a public facility is located.

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

35 (1) Each state agency and school district shall implement cost-
36 effective conservation improvements and maintain efficient operation of
37 its facilities in order to minimize energy consumption and related
38 environmental impacts and reduce operating costs. Each state agency

1 shall undertake an energy audit and implement cost-effective
2 conservation measures pursuant to the time schedules and requirements
3 set forth in chapter 43.19 RCW, except that any state agency that,
4 after December 31, 1997, has completed energy audits and implemented
5 cost-effective conservation measures, or has contracted with an energy
6 service company for energy audits and conservation measures, is deemed
7 to have met the requirements of this subsection for those facilities
8 included in the audits and conservation measures. Each school district
9 shall undertake an energy audit and implement cost-effective
10 conservation measures pursuant to the time schedules and requirements
11 set forth in section 31 of this act. Performance-based contracting
12 shall be the preferred method for completing energy audits and
13 implementing cost-effective conservation measures.

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

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

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

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

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

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

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

33 (4) The department shall comply with the requirements of chapter
34 39.80 RCW when contracting for architectural or engineering services.

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

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

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

9 (a) For each district facility, the energy consumption surveys
10 shall be completed no later than December 31, 2001, and the walk-
11 through surveys shall be completed no later than October 1, 2002. Upon
12 completion of each walk-through survey, the district shall implement
13 energy conservation maintenance and operation procedures that may be
14 identified for any district facility. These procedures shall be
15 implemented as soon as possible, but not later than twelve months after
16 the walk-through survey.

17 (b) Except as provided in subsection (3) of this section, if a
18 walk-through survey has identified potentially cost-effective energy
19 conservation measures, the district shall undertake an investment grade
20 audit of the facility. Investment grade audits shall be completed no
21 later than June 30, 2003, and installation of cost-effective
22 conservation measures recommended in the investment grade audit shall
23 be completed no later than December 31, 2004.

24 (2) A school district that, after December 31, 1997, has completed
25 energy audits and implemented cost-effective conservation measures, or
26 has contracted with an energy service company for energy audits and
27 conservation measures, is deemed to have met the requirements of this
28 section for those facilities included in the audits and conservation
29 measures.

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

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

1 The legislature finds and declares that the buildings, facilities,
2 equipment, and vehicles owned or leased by state government consume
3 significant amounts of energy and that energy conservation actions,
4 including energy management systems, to provide for efficient energy
5 use in these buildings, facilities, equipment, and vehicles will reduce
6 the costs of state government. In order for the operations of state
7 government to provide the citizens of this state an example of energy
8 use efficiency, the legislature further finds and declares that state
9 government should undertake an aggressive program designed to reduce
10 energy use in state buildings, facilities, equipment, and vehicles
11 within a reasonable period of time. The use of appropriate tree
12 plantings for energy conservation is encouraged as part of this
13 program.

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

16 It is the purpose of RCW 43.19.670 through 43.19.685 to require
17 energy audits in state-owned buildings, to require energy audits as a
18 lease condition in all new, renewed, and renegotiated leases of
19 buildings by the state, to undertake such modifications and
20 installations as are necessary to maximize the efficient use of energy
21 in these buildings, including but not limited to energy management
22 systems, and to establish a policy for the purchase of state vehicles,
23 equipment, and materials which results in efficient energy use by the
24 state.

25 For a building that is leased by the state, energy audits and
26 implementation of cost-effective energy conservation measures are
27 required only for that portion of the building that is leased by the
28 state when the state leases less than one hundred percent of the
29 building. When implementing cost-effective energy conservation
30 measures in buildings leased by the state, those measures must generate
31 savings sufficient to finance the building modifications and
32 installations over a loan period not greater than ten years and allow
33 repayment during the term of the lease.

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

1 As used in RCW 43.19.670 through 43.19.685, the following terms
2 have the meanings indicated unless the context clearly requires
3 otherwise.

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

6 (a) An energy consumption survey which identifies the type, amount,
7 and rate of energy consumption of the facility and its major energy
8 systems. This survey shall be made by the agency responsible for the
9 facility.

10 (b) A walk-through survey which determines appropriate energy
11 conservation maintenance and operating procedures and indicates the
12 need, if any, for the acquisition and installation of energy
13 conservation measures and energy management systems. This survey shall
14 be made by the agency responsible for the facility if it has
15 technically qualified personnel available. The director of general
16 administration shall provide technically qualified personnel to the
17 responsible agency if necessary.

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

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

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

32 (a) Insulation of the facility structure and systems within the
33 facility;

34 (b) Storm windows and doors, multiglazed windows and doors, heat
35 absorbing or heat reflective glazed and coated windows and door
36 systems, additional glazing, reductions in glass area, and other window
37 and door system modifications;

38 (c) Automatic energy control systems;

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

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

5 (f) Solar water heating systems;

6 (g) Furnace or utility plant and distribution system modifications
7 including replacement burners, furnaces, and boilers which
8 substantially increase the energy efficiency of the heating system;
9 devices for modifying flue openings which will increase the energy
10 efficiency of the heating system; electrical or mechanical furnace
11 ignitions systems which replace standing gas pilot lights; and utility
12 plant system conversion measures including conversion of existing oil-
13 and gas-fired boiler installations to alternative energy sources;

14 (h) Caulking and weatherstripping;

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

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

18 (k) Energy management systems; and

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

21 (~~(3)~~) (4) "Energy conservation maintenance and operating
22 procedure" means modification or modifications in the maintenance and
23 operations of a facility, and any installations within the facility,
24 which are designed to reduce energy consumption in the facility and
25 which require no significant expenditure of funds.

26 (~~(4)~~) (5) "Energy management system" has the definition contained
27 in RCW 39.35.030.

28 (6) "Energy savings performance contracting" means the process
29 authorized by chapter 39.35C RCW by which a company contracts with a
30 state agency to conduct no-cost energy audits, guarantee savings from
31 energy efficiency, provide financing for energy efficiency
32 improvements, install or implement energy efficiency improvements, and
33 agree to be paid for its investment solely from savings resulting from
34 the energy efficiency improvements installed or implemented.

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

37 (8) "Facility" means a building, a group of buildings served by a
38 central energy distribution system, or components of a central energy
39 distribution system.

1 (~~(5)~~) (9) "Implementation plan" means the annual tasks and budget
2 required to complete all acquisitions and installations necessary to
3 satisfy the recommendations of the energy audit.

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

6 For each state-owned facility, the director of general
7 administration, (~~in cooperation with the director of the state energy~~
8 office)) or the agency responsible for the facility if other than the
9 department of general administration, shall conduct(~~(, by contract or~~
10 other arrangement,)) an energy audit (~~(for each state-owned))~~ of that
11 facility. (~~All energy audits shall be coordinated with and complement~~
12 other governmental energy audit programs. The energy audit for each
13 state-owned facility located on the capitol campus shall be completed
14 no later than July 1, 1981, and the results and findings of each energy
15 audit shall be compiled and transmitted to the governor and the
16 legislature no later than October 1, 1981.)) This energy audit may be
17 conducted by contract or by other arrangement, including appropriate
18 agency staff. Performance-based contracting shall be the preferred
19 method for implementing and completing energy audits. For (~~every~~
20 other)) each state-owned facility, the energy consumption surveys shall
21 be completed no later than October 1, (~~1982~~) 2001, and the walk-
22 through surveys shall be completed no later than July 1, (~~1983~~) 2002.

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

25 (1) Upon completion of each walk-through survey required by RCW
26 43.19.675, the director of general administration or the agency
27 responsible for the facility if other than the department of general
28 administration shall implement energy conservation maintenance and
29 operation procedures that may be identified for any state-owned
30 facility. These procedures shall be implemented as soon as possible
31 but not later than twelve months after the walk-through survey.

32 (2) (~~(By December 31, 1981, for the capitol campus the director of~~
33 ~~general administration shall prepare and transmit to the governor and~~
34 ~~the legislature an implementation plan.))~~ If a walk-through survey has
35 identified potentially cost-effective energy conservation measures, the
36 agency responsible for the facility shall undertake an investment grade
37 audit of the facility. Investment grade audits shall be completed no

1 later than December 1, 2002. Installation of cost-effective energy
2 conservation measures recommended in the investment grade audit shall
3 be completed no later than June 30, 2004.

4 ~~(3) ((By December 31, 1983, for all other state-owned facilities,~~
5 ~~the director of general administration shall prepare and transmit to~~
6 ~~the governor and the legislature the results of the energy consumption~~
7 ~~and walk-through surveys and a schedule for the conduct of technical~~
8 ~~assistance studies. This submission shall contain the energy~~
9 ~~conservation measures planned for installation during the ensuing~~
10 ~~biennium. Priority considerations for scheduling technical assistance~~
11 ~~studies shall include but not be limited to a facility's energy~~
12 ~~efficiency, responsible agency participation, comparative cost and type~~
13 ~~of fuels, possibility of outside funding, logistical considerations~~
14 ~~such as possible need to vacate the facility for installation of energy~~
15 ~~conservation measures, coordination with other planned facility~~
16 ~~modifications, and the total cost of a facility modification, including~~
17 ~~other work which would have to be done as a result of installing energy~~
18 ~~conservation measures. Energy conservation measure acquisitions and~~
19 ~~installations shall be scheduled to be twenty-five percent complete by~~
20 ~~June 30, 1985, or at the end of the capital budget biennium which~~
21 ~~includes that date, whichever is later, fifty-five percent complete by~~
22 ~~June 30, 1989, or at the end of the capital budget biennium which~~
23 ~~includes that date, whichever is later, eighty-five percent complete by~~
24 ~~June 30, 1993, or at the end of the capital budget biennium which~~
25 ~~includes that date, whichever is later, and fully complete by June 30,~~
26 ~~1995, or at the end of the capital budget biennium which includes that~~
27 ~~date, whichever is later. Each state agency shall implement energy~~
28 ~~conservation measures with a payback period of twenty-four months or~~
29 ~~less that have a positive cash flow in the same biennium.))~~

30 For each biennium until all measures are installed, the director of
31 general administration shall report to the governor and legislature
32 installation progress, measures planned for installation during the
33 ensuing biennium(~~(, and changes, if any, to the technical assistance~~
34 ~~study schedule)). This report shall be submitted by December 31,~~
35 ~~((1984))~~ 2004, or at the end of the following year whichever
36 immediately precedes the capital budget adoption, and every two years
37 thereafter until all measures are installed.

38 ~~(4) ((The director of general administration shall adopt rules to~~
39 ~~facilitate private investment in energy conservation measures for~~

1 ~~state-owned buildings consistent with state law.))~~ Agencies may
2 contract with energy service companies as authorized by chapter 39.35C
3 RCW for energy audits and implementation of cost-effective energy
4 conservation measures. The department shall provide technically
5 qualified personnel to the responsible agency upon request. The
6 department shall recover a fee for this service.

7 NEW SECTION. Sec. 37. If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. Sec. 38. This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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