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HOUSE BILL 1059

State of Washington 59th Legislature 2005 Regular Session

By Representatives Hudgins, Upthegrove, Kenney, Haigh, Kagi, Morris, McIntire and Morrell; by request of Governor Locke

Read first time 01/12/2005. Referred to Committee on Technology, Energy & Communications.

AN ACT Relating to energy efficiency and renewable energy; and adding a new chapter to Title 80 RCW.

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

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

(1) Washington's utilities have been historical leaders in developing renewable hydroelectric energy and investing in energy efficiency. The state economy has greatly benefited from the strong foundation of low-cost hydroelectric generation as well as forward-looking investments in energy efficiency;

(2) Washington has a long tradition of energy policies that support energy efficiency and renewable energy development. These policies, which include financial incentives, have stimulated economic development, reduced operating costs for businesses, made industries more competitive, made homes more comfortable and efficient, reduced the energy burden of low-income households, and protected the environment;

(3) Washington is blessed with an abundance of local renewable energy resources;

(4) Washington utility green tariff programs have stimulated consumer interest and modest investments in renewable energy development;

(5) Uncertainty in the electric industry about the industry's long-term regulatory construct has shortened utility planning horizons and reduced the confidence of electric utilities to recover investments in energy conservation, system reliability, and new generation, including renewable energy resources;

(6) The 2003 northeast blackouts and western energy crisis of 2000-2001 demonstrated the vulnerability of an energy system reliant on transmission of electricity distant from load centers, increasingly strained water resources, and natural gas impacted by volatile market prices;

(7) Aggregation of utility purchasing power under statewide goals to acquire additional renewable generation and energy efficiency resources on behalf of all ratepayers is vital to create high-quality jobs, promote rural economic development, and stabilize energy supplies and prices;

(8) Washington electric ratepayers will benefit from resource planning and acquisition that hedges against future fuel price risk by assisting utilities in developing a diverse portfolio of resources to meet customer needs;

(9) Encouraging irrigators to increase the efficiency of their operations will yield substantial benefits by reducing peak demands of both electricity and water supplies, improving farm economics, and maximizing use of water resources; and

(10) Fuel diversity, economic, and environmental benefits from renewable energy and efficiency resources accrue to the public at large, and therefore all consumers and utilities should support consistent development of these resources to meet the state's electric demand and stabilize electricity prices.

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

(1) "Commission" means the Washington state utilities and transportation commission.

(2) "Conservation" means any reduction in electric power

consumption as a result of increases in the efficiency of energy use, production, distribution, or transmission.

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

(4) "Cost-effective" has the same meaning as in RCW 80.52.030.

(5) "Department" means the department of community, trade, and economic development.

(6) "Distributed generation" means either an electricity generation system that uses as its fuel an eligible renewable resource or a fuel cell as defined in RCW 43.19.651, and: (a) Is available on-site and not from a commercial source, and (b) has a generating capacity of not more than twenty-five kilowatts.

(7) "Electric utility" means a consumer-owned or investor-owned utility.

(8) "Eligible renewable resources" means:

(a) Electricity generation facilities powered by a renewable resource other than fresh water that commenced operation between April 1, 1999, and April 1, 2002, and that are used to serve Washington retail electricity customers;

(b) Additions made to electricity generation facilities powered by a renewable resource other than fresh water, that commenced operation between April 1, 1999, and April 1, 2002, where electricity generated from the renewable resource is used to serve Washington retail electricity customers;

(c) Electricity generation facilities powered by a renewable resource other than fresh water that are contracted between April 1, 1999, and April 1, 2002, for delivery to Washington retail electricity customers;

(d) Electricity generation facilities powered by a renewable resource other than fresh water that commence operation after April 1, 2002, and any subsequent additions to those facilities, that are located in the Pacific Northwest;

(e) Additional power generation achieved, above original design specifications, at hydroelectric facilities operating on April 1, 1999, that are located in the Pacific Northwest, where that additional generation results from upgrades or improvements completed after December 31, 2004, and does not result in any new water diversions; or

(f) Additions to hydroelectric generating capacity operating on April 1, 1999, in irrigation pipes and canals that are located in the Pacific Northwest, where the additional generation results from upgrades or improvements completed after December 31, 2004, and does not result in any new water diversions.

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

(10) "Integrated resource plan" or "plan" means a plan describing the mix of generating resources and improvements in the efficient use of electricity that will meet current and future needs at the lowest reasonable cost to the utility and its ratepayers.

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

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

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

(14) "Pacific Northwest" has the same meaning as defined in section 3 of the Pacific Northwest electric power planning and conservation act, P.L. 96-501 (16 U.S.C. Sec. 389a; 94 Stat. 2698).

(15) "Renewable energy credit" means a tradable certificate of proof of one megawatt-hour of electricity generated from a renewable resource that: (a) Is located in the United States portion of the western region as defined by the western electricity coordinating council; (b) commenced construction after December 31, 2004; (c) is not powered by fresh water; and (d) is verified by the renewable energy credit trading system selected by the department.

(16) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (g) wave or tidal power; or (h) gas from sewage treatment facilities.

(17) "Retail load" means the amount of kilowatt-hours of electricity delivered by an electric utility to its Washington retail customers.

(18) "Small utility" means a small utility as defined in RCW 19.29A.010.

NEW SECTION. **Sec. 3.** (1) Each electric utility must develop an integrated resource plan consistent with the provisions of this section. Such a plan shall be prepared on a biennial basis and, at a minimum, must include:

(a) A range of forecasts of future customer demand using methods that examine the effect of economic forces on the consumption of electricity and that address changes in the number, type, and efficiency of electrical end-uses;

(b) An assessment of technically feasible improvements in the efficient use of electricity, including load management and fuel switching, as well as currently employed and new policies and programs needed to obtain the efficiency improvements;

(c) An assessment of technically feasible generating technologies including but not limited to renewable resources, cogeneration, power purchases, and thermal resources;

(d) An evaluation comparing the cost-effectiveness of generating resources with the cost-effectiveness of improvements in the efficient use of electricity;

(e) The integration of the demand forecasts and resource evaluations into a long-range integrated resource plan describing the mix of resources and efficiency measures that will meet current and future needs at the lowest reasonable cost to the utility and its ratepayers;

(f) A short-term plan outlining the specific actions to be taken by the utility consistent with the long-range integrated resource plan; and

(g) For all plans subsequent to the initial integrated resource plan, a progress report that relates the new plan to the previously filed plan.

(2)(a) Investor-owned utilities shall submit integrated resource plans to the commission. The commission shall establish by rule the requirements for preparation and submission of integrated resource plans.

(b) The commission may adopt additional rules as necessary to clarify the requirements of subsection (1) of this section as they apply to investor-owned utilities.

(3)(a) Each consumer-owned utility shall develop and publish a work plan for the preparation of an integrated resource plan. The work plan shall set forth the proposed content of the integrated resource plan, the proposed schedule of preparation, and provisions for public involvement in the preparation and review of the plan. The governing body of each utility shall approve an integrated resource plan only after it has provided public notice and hearing on the proposed plan. Each consumer-owned utility shall publish a final integrated resource plan either as part of an annual report or as a separate document available to the public.

(b) Each consumer-owned utility shall transmit a copy of its integrated resource plan to the department by July 31, 2007, and transmit subsequent plans every two years thereafter.

(c) Consumer-owned utilities that are full requirements customers of the Bonneville power administration are exempted from the requirements of this section.

(4) Every two years as part of its biennial report required under RCW 43.21F.045, the department shall review the integrated resource plans of consumer-owned utilities and prepare a report to the legislature assessing the utilities' conformance with this section. The report shall include a statewide summary of utility load forecasts, load/resource balance, and utility plans for the development of thermal generation, renewable resources, and efficiency resources. The commission shall provide the department with data summarizing

activities of investor-owned utilities for use in the department's statewide summary.

NEW SECTION. **Sec. 4.** (1) The following energy efficiency standard is established:

(a) Beginning January 1, 2007, and each year thereafter through December 31, 2010, each electric utility shall on average annually acquire electricity savings directly attributable to conservation programs serving its Washington retail customers sufficient to meet an amount equal to seventy-five one-hundredths of one percent of the utility's 2006 retail load. By December 31, 2010, the electricity savings acquired from the conservation programs implemented during the preceding four-year period must meet at least three percent of the utility's 2006 retail load.

(b) Beginning January 1, 2011, and each year thereafter through December 31, 2013, each electric utility shall on average annually acquire electricity savings directly attributable to conservation programs serving its Washington retail customers sufficient to meet an amount equal to eighty-five one-hundredths of one percent of the utility's 2010 retail load. By December 31, 2013, the electricity savings acquired from the conservation programs implemented during the preceding three-year period will meet at least two and fifty-five one-hundredths of one percent of the utility's 2010 retail load.

(c) Each electric utility shall continue to comply with the standard established in (b) of this subsection for each subsequent three-year period. The amount of conservation the utility needs to acquire to meet the standard will be based on that utility's retail load for the calendar year immediately preceding each three-year period.

(2) Nothing in this chapter limits electric utilities from exceeding the energy efficiency standard.

(3) An electric utility shall meet at least five percent of its annual energy efficiency standard requirement with low-income energy efficiency services, unless it can demonstrate to the commission in the case of an investor-owned utility or the department in the case of a consumer-owned utility that sufficient opportunities at cost do not exist within its service territory for conserving energy in low-income households.

(4) In meeting the energy efficiency standard, an electric utility may count conservation it implements even if it also receives credit or funding for that conservation from the Bonneville power administration.

(5) An electric utility may acquire up to fifteen percent of the energy savings to meet the annual energy efficiency standard using high-efficiency cogeneration. The energy savings resulting from the use of high-efficiency cogeneration are calculated as the difference in energy used by the high-efficiency cogeneration unit and the energy used by equivalent stand-alone thermal and electricity generation processes.

(6) Each electric utility shall use practices generally accepted in the Pacific Northwest to measure accrued savings from conservation, including monitoring and verification of those savings.

(7) Each electric utility shall pursue energy conservation opportunities in each customer class to achieve savings that are not independently captured by consumer acquisition. The portfolio of energy conservation programs used to meet the efficiency standard must be cost-effective. A conservation program implemented by an investor-owned utility is cost-effective if it passes the total resource cost test as defined by the commission.

(8) If an electric utility can demonstrate to the commission in the case of an investor-owned utility or the department in the case of a consumer-owned utility that it is unable to meet the energy efficiency standard created in this section due to a lack of sufficient opportunities for acquiring conservation, that utility can petition to the commission or department, as appropriate, to meet a lesser standard.

(9) If an electric utility demonstrates to the commission in the case of an investor-owned utility or the department in the case of a consumer-owned utility that it has not experienced any increase in its average annual retail load growth during the previous five years, that utility may petition to the commission or the department, as appropriate, for an exemption from the standard in subsection (1) of this section.

(10) The provisions of this section do not apply to a small utility or a full requirements customer. However, nothing in this chapter prohibits the governing body of a small utility or a full requirements customer from determining the utility should comply with any or all of

the provisions of this chapter, which governing bodies are encouraged to do. At any time after this energy efficiency standard is enacted, if a utility no longer meets the definition of a small utility or a full requirements customer, that utility will be required to meet the provisions of this chapter.

(11)(a) In the case of consumer-owned utilities, the department shall:

(i) Account for the annual electricity savings achieved by a utility on an annual basis pursuant to subsection (1) of this section;

(ii) Determine whether the utility is meeting at least five percent of its annual energy efficiency standard with low-income energy efficiency services as required under subsection (3) of this section;

(iii) Verify the amount of credit a utility may take against the energy efficiency standard for credits or funding received for conservation from the Bonneville power administration as provided under subsection (4) of this section; and

(iv) Determine the amount of credit that may be taken for high-efficiency cogeneration against the energy efficiency standard pursuant to subsection (5) of this section.

(b) In the case of investor-owned utilities, the commission shall:

(i) Account for the annual electricity savings achieved by a utility on an annual basis pursuant to subsection (1) of this section;

(ii) Determine whether the utility is meeting at least five percent of its annual energy efficiency standard with low-income energy efficiency services as required under subsection (3) of this section;

(iii) Verify the amount of credit a utility may take against the energy efficiency standard for credits or funding received for conservation from the Bonneville power administration as provided under subsection (4) of this section; and

(iv) Determine the amount of credit that may be taken for high-efficiency cogeneration against the energy efficiency standard pursuant to subsection (5) of this section.

NEW SECTION. **Sec. 5.** (1) The following renewable energy standard is established:

(a) By January 1, 2011, and each year thereafter through December 31, 2015, each electric utility shall use eligible renewable resources

or acquire equivalent renewable energy credits, or a combination of both, to serve at least five percent of its annual retail load.

(b) By January 1, 2016, and each year thereafter through December 31, 2023, each electric utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to serve at least ten percent of its annual retail load.

(c) By January 1, 2024, and each year thereafter, each electric utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to serve at least fifteen percent of its annual retail load.

(2) Nothing in this chapter limits electric utilities from exceeding this renewable energy standard.

(3) In meeting this renewable energy standard, an electric utility may count eligible renewable resources even if it also receives credit or funding from the Bonneville power administration for those resources.

(4) In meeting this renewable energy standard, a consumer-owned utility that is a customer of the Bonneville power administration can count that portion of its load served by eligible renewable resources that are part of the Bonneville power administration's system mix. A utility also can receive credit toward meeting this standard for the portion of environmentally preferred power it purchases from the Bonneville power administration that meets the definition of an eligible renewable resource.

(5) An electric utility that offers an optional pricing program that charges a higher rate for electricity generated from renewable energy resources shall not include the renewable energy generated under such a program as eligible renewable energy in its compliance with this renewable energy standard.

(6) When an electric utility acquires sufficient eligible renewable resources or renewable energy credits, or a combination of both, to serve at least five percent of its annual retail load, the utility may elect after notifying its retail electricity customers to discontinue meeting the terms and conditions of RCW 19.29A.090. Nothing in this section prohibits a utility from continuing to offer its retail electricity customers a voluntary option to purchase qualified alternative energy resources in accordance with RCW 19.29A.090.

(7)(a) If an electric utility can demonstrate to the commission in the case of an investor-owned utility or the department in the case of a consumer-owned utility that it is unable to meet the renewable energy standard created in this section due to insufficient availability of eligible renewable resources and renewable energy credits in an amount equal to or below the cost cap described in (b) of this subsection, that utility can petition to the commission or department, as appropriate, to meet a lesser standard.

(b) The renewable energy standard shall not require an electric utility to incur a cost per megawatt hour greater than forty-five dollars for any eligible renewable resource or renewable energy credit. The cost per megawatt hour means the cost of the electricity at the point of entry onto the electric grid. Beginning in 2007, this cost cap shall be adjusted annually by the rate of change of the inflation indicator "gross domestic product-implicit price deflator" as published by the bureau of economic analysis, United States department of commerce.

(8)(a) An electric utility may receive additional credit toward meeting the renewable energy standard if it acquires eligible renewable resources physically located in Washington state:

(i) Where the eligible renewable resource commenced construction after December 31, 2004; and

(ii) Where the electric utility purchased or contracted for the eligible renewable resource by December 31, 2008.

(b) An electric utility that acquires energy from an eligible renewable resource that meets the criteria under this section may count that resource above its base value in meeting the renewable energy standard according to the following benchmarks:

(i) Energy from an eligible renewable resource purchased or contracted by December 31, 2005, can be counted at one and one-tenth times its base value;

(ii) Energy from an eligible renewable resource purchased or contracted by December 31, 2006, can be counted at one and nine-hundredths times its base value;

(iii) Energy from an eligible renewable resource purchased or contracted by December 31, 2007, can be counted at one and eight-hundredths times its base value; or

(iv) Energy from an eligible renewable resource purchased or contracted by December 31, 2008, can be counted at one and seven-hundredths times its base value.

(9)(a) An electric utility may receive additional credit toward meeting the renewable energy standard if it acquires eligible renewable resources physically located in Washington state or renewable energy credits from an eligible renewable resource physically located in Washington state:

(i) Where the eligible renewable resource commenced construction after December 31, 2004; and

(ii) Where the renewable energy developer used apprenticeship programs during construction of the eligible renewable resources.

(b) The apprenticeship programs must be approved by the apprenticeship council under its authority in chapter 49.04 RCW, according to the following benchmarks:

(i) Minimum levels of apprenticeship programs shall be ten percent of total labor hours for projects commencing construction after December 31, 2008;

(ii) Minimum levels of apprenticeship programs shall be twelve and one-half percent of total labor hours for projects commencing construction after December 31, 2015; or

(iii) Minimum levels of apprenticeship programs shall be fifteen percent of total labor hours for projects commencing construction after December 31, 2022.

(c) The apprenticeship council will determine if construction of an eligible renewable resource meets one of the benchmarks listed in (b) of this subsection.

(d) An electric utility that acquires energy or renewable energy credits from an eligible renewable resource that meets the criteria under this section may count that resource at one and two-tenths times its base value in meeting the renewable energy standard.

(10) If an electric utility demonstrates to the commission in the case of an investor-owned utility or the department in the case of a consumer-owned utility that it has not experienced any increase in its average annual retail load growth during the previous five years, that utility may petition to the commission or the department, as appropriate, for an exemption from the standard in subsection (1) of this section.

(11) The provisions of this section do not apply to a small utility or a full requirements customer. However, nothing in this chapter prohibits the governing body of a small utility or a full requirements customer from determining the utility should comply with any of the provisions of this chapter, which governing bodies are encouraged to do. At any time after this renewable energy standard is enacted, if a utility no longer meets the definition of a small utility or a full requirements customer, that utility will be required to meet the provisions of this chapter.

(12)(a) In the case of consumer-owned utilities, the department shall:

(i) Verify the amount of credit taken against the renewable energy standard for the portion of environmentally preferred power purchased from the Bonneville power administration that meets the definition of eligible renewable resources pursuant to subsection (4) of this section; and

(ii) Determine whether a utility has acquired electricity generated by a facility where apprenticeship programs were used during the construction of an eligible renewable resource in order to receive additional credit against the renewable energy standard pursuant to subsection (9) of this section.

(b) In the case of investor-owned utilities, the commission shall:

(i) Verify the amount of credit taken against the renewable energy standard for the portion of environmentally preferred power purchased from the Bonneville power administration that meets the definition of eligible renewable resources pursuant to subsection (4) of this section; and

(ii) Determine whether a utility has acquired electricity generated by a facility where apprenticeship programs were used during the construction of an eligible renewable resource in order to receive additional credit against the renewable energy standard pursuant to subsection (9) of this section.

NEW SECTION. **Sec. 6.** (1) An electric utility may count eligible distributed generation towards meeting both the renewable energy and energy efficiency standards if the utility: (a) Owns the distributed generation facility and the renewable energy credits produced by the

facility; or (b) through contract with a retail electric customer has purchased the renewable energy credits of a distributed generation facility.

(2) An electric utility may receive credit towards meeting the energy efficiency or renewable energy standards for resources when the utility also receives credit or funding for those same resources under an efficiency or renewable standard established by federal legislation. However, an electric utility may not receive credit towards meeting the energy efficiency or renewable energy standards for resources when the utility also receives credit or funding for those same resources under an efficiency or renewable standard established by legislation in another state.

(3) In preparing a least cost plan, integrated resource plan, or equivalent analysis that describes the mix of generating resources and improvements in the efficient use of electricity that will meet current and future needs of the utility and its ratepayers, an electric utility must include in its modeling and analysis an assumption that the renewable energy and energy efficiency standards established in this chapter will be met.

NEW SECTION. **Sec. 7.** (1) The department must convene a group of stakeholders, including the commission, to advise it on the following:

(a) Development of criteria for cost-effective conservation that qualifies toward the energy efficiency standard and program implementation guidelines, including verification and monitoring of savings. The department will consider all existing and appropriate criteria and guidelines where applicable, and may rely on work of regional power planning committees in determining criteria and guidelines;

(b) Development of a definition of high-efficiency cogeneration that accounts for technological improvements over time;

(c) Selection of an existing system of renewable energy credits that may be used to comply with section 5 of this act. The department will consider all existing and appropriate systems and organizations that facilitate renewable energy credit trading westernwide or nationally; and

(d) Development of an appropriate implementation schedule for the

provisions of this chapter for any utility that no longer meets the definition of a small utility after the effective date of this section.

(2) By June 30, 2006, the department may adopt rules governing the issues listed in subsection (1) of this section.

(3) By January 1, 2008, the department must select a system of renewable energy credits that may be used to comply with section 5 of this act.

(4) For investor-owned utilities, the commission has the exclusive authority to approve criteria, program implementation guidelines, and appropriate financing and accounting mechanisms for expenditures related to acquisition of eligible renewable resources and conservation. In determining whether costs associated with procuring resources in accordance with this chapter are prudently incurred by an investor-owned utility and should be recovered in rates, the commission shall apply the same principles it uses in determining prudency and cost recovery for other electricity resources used to serve customers in the state of Washington.

NEW SECTION. **Sec. 8.** (1) On or before June 1, 2008, each electric utility must demonstrate progress in meeting the efficiency and renewable standards in this chapter. Investor-owned utilities will report to the commission, and consumer-owned utilities will report to the department.

(2) On or before June 1, 2011, and annually thereafter, each electric utility must demonstrate compliance with the efficiency and renewable standards in this chapter, for the annual period ending the previous December 31st. Each investor-owned utility will demonstrate compliance to its customers in published form and to the commission which will share this information with the department. Each consumer-owned utility will demonstrate compliance to its customers in published form, to its governing body, and to the department.

(3) Each report to the commission or the department must include at least the following: The amount of electricity generated or acquired from each eligible renewable resource; the amount of renewable energy credits acquired, sold, or traded; the annual retail load for an electric utility; and the amount of conservation annually acquired, including the amount of low-income energy efficiency services provided,

and the amount of high-efficiency cogeneration used to meet the standard.

NEW SECTION. **Sec. 9.** (1) On or before December 1, 2011, and biennially thereafter, the department and commission shall submit a report to the legislature on the accomplishments of the efficiency and renewable standards created in this chapter, including unachieved cost-effective conservation opportunities, and make recommendations for revisions to the standards. The commission may initiate rule-making proceedings based on the results of these reports to modify requirements imposed on investor-owned utilities.

(2)(a) In the case of consumer-owned utilities, the department shall determine the amount of unachieved cost-effective conservation for the purposes of submitting a report to the legislature pursuant to this section.

(b) In the case of investor-owned utilities, the commission shall determine the amount of unachieved cost-effective conservation for the purposes of submitting a report to the legislature pursuant to this section.

(3) On or before January 1, 2017, the department shall review and recommend to the legislature continuation or modification of the efficiency and renewable standards based on assessments of the effectiveness of the standards, market conditions, and unachieved opportunities.

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

NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act constitute a new chapter in Title 80 RCW.

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