

SHB 2839 - H AMD 787

By Representative Morris

ADOPTED AS AMENDED 02/09/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the electrical  
4 and natural gas utility industry is facing a transformational change  
5 brought on by new technology, rapidly changing costs, and emerging  
6 opportunities for customers. The legislature finds that similar  
7 changes in technology and customer preferences have swiftly altered  
8 other industries and intends for Washington's electrical and natural  
9 gas utility regulatory environment to continue to protect consumers  
10 while enabling regulated utilities to systematically respond to new  
11 technologies and opportunities. The legislature intends to ensure  
12 that consumers receive cost-effective and reliable services that are  
13 environmentally responsible services by authorizing the Washington  
14 utilities and transportation commission to employ alternative forms  
15 of regulation to traditional rate-based, rate of return regulation  
16 for electrical and gas companies. The legislature finds that a  
17 similar update to the utilities and transportation commission's  
18 statutory grant of authority for telecommunications customers a  
19 decade ago serves as a reasonable model. The legislature intends that  
20 the utilities and transportation commission will utilize alternative  
21 forms of regulation to further the state's public policy goals by  
22 ensuring that electrical and gas companies are incentivized to invest  
23 to meet state policy objectives.

24 The legislature intends that an alternative form of regulation  
25 should: Enable utility services designed to support optimal and  
26 efficient use of the electrical or natural gas system and utility  
27 operations; align utility regulatory incentives with the public  
28 interest; maintain and enhance overall electrical or natural gas  
29 system reliability, resilience, and security; allow electrical or  
30 natural gas companies to support and participate in market  
31 transformation for enabling technologies, without harming  
32 competition; maximize the value of new business opportunities to

1 utility customers, especially low-income customers; protect utility  
2 customers from short and long-term risk; ensure an appropriate level  
3 of consumer protection; and support the achievement of state  
4 emissions reduction goals while avoiding adverse environmental  
5 impacts.

6 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to  
7 read as follows:

8 ((Unless the context clearly requires otherwise,)) The  
9 definitions in this section apply throughout this chapter unless the  
10 context clearly requires otherwise.

11 (1) "Bondable conservation investment" means all expenditures  
12 made by electrical, gas, or water companies with respect to energy or  
13 water conservation measures and services intended to improve the  
14 efficiency of electricity, gas, or water end use, including related  
15 carrying costs if:

16 (a) The conservation measures and services do not produce assets  
17 that would be bondable utility property under the general utility  
18 mortgage of the electrical, gas, or water company;

19 (b) The commission has determined that the expenditures were  
20 incurred in conformance with the terms and conditions of a  
21 conservation service tariff in effect with the commission at the time  
22 the costs were incurred, and at the time of such determination the  
23 commission finds that the company has proven that the costs were  
24 prudent, that the terms and conditions of the financing are  
25 reasonable, and that financing under this chapter is more favorable  
26 to the customer than other reasonably available alternatives;

27 (c) The commission has approved inclusion of the expenditures in  
28 rate base and has not ordered that they be currently expensed; and

29 (d) The commission has not required that the measures demonstrate  
30 that energy savings have persisted at a certain level for a certain  
31 period before approving the cost of these investments as bondable  
32 conservation investment.

33 (2) "Conservation bonds" means bonds, notes, certificates of  
34 beneficial interests in trusts, or other evidences of indebtedness or  
35 ownership that:

36 (a) The commission determines at or before the time of issuance  
37 are issued to finance or refinance bondable conservation investment  
38 by an electrical, gas or water company; and

1 (b) Rely partly or wholly for repayment on conservation  
2 investment assets and revenues arising with respect thereto.

3 (3) "Conservation investment assets" means the statutory right of  
4 an electrical, gas, or water company:

5 (a) To have included in rate base all of its bondable  
6 conservation investment and related carrying costs; and

7 (b) To receive through rates revenues sufficient to recover the  
8 bondable conservation investment and the costs of equity and debt  
9 capital associated with it, including, without limitation, the  
10 payment of principal, premium, if any, and interest on conservation  
11 bonds.

12 (4) "Finance subsidiary" means any corporation, company,  
13 association, joint stock association, or trust that is beneficially  
14 owned, directly or indirectly, by an electrical, gas, or water  
15 company, or in the case of a trust issuing conservation bonds  
16 consisting of beneficial interests, for which an electrical, gas, or  
17 water company or a subsidiary thereof is the grantor, or an  
18 unaffiliated entity formed for the purpose of financing or  
19 refinancing approved conservation investment, and that acquires  
20 conservation investment assets directly or indirectly from such  
21 company in a transaction approved by the commission.

22 (5) "Greenhouse gas" and "greenhouse gases" has the same meaning  
23 as defined in RCW 70.235.010.

24 (6) "Greenhouse gas planning adder" means a calculation of the  
25 economic impacts associated with an incremental increase in  
26 greenhouse gas emissions in a calendar year and must be an amount  
27 equal to the greater of: (a) The minimum annual greenhouse gas  
28 planning adder for such a calendar year; or (b) the applicable carbon  
29 or greenhouse gas tax rate, if any, as expressed in dollars per  
30 metric ton of carbon dioxide or greenhouse gas for such a calendar  
31 year.

32 (7) "Intermediate-term resource options" means a new or renewed  
33 contract for electricity or natural gas with a term of more than  
34 three but less than five years for the provision of electricity or  
35 natural gas to retail end-use customers in this state.

36 (8) "Long-term resource options" means:

37 (a) Either a new ownership interest in an electric or gas plant  
38 or an upgrade to an existing electric plant; or

1 (b) A new or renewed contract for electricity or natural gas with  
2 a term of five or more years for the provision of electricity or  
3 natural gas to retail end-use customers in this state.

4 (9) "Minimum annual greenhouse gas planning adder" means, for  
5 calendar year 2018, forty dollars per metric ton of greenhouse gas,  
6 which amount must be increased each January 1st by one and one-fourth  
7 percent, rounded to the nearest dollar.

8 (10) "Qualified biomass energy" has the same meaning as defined  
9 in RCW 19.285.030.

10 (11) "Upgrade" means any modification made for the primary  
11 purpose of increasing the electric generation capacity of an electric  
12 generation facility. "Upgrade" does not include routine or necessary  
13 maintenance, installation of emission control equipment,  
14 installation, replacement, or modification of equipment that improves  
15 the heat rate of the facility, or installation, replacement, or  
16 modification of equipment for the primary purpose of maintaining  
17 reliable generation output capability that does not increase the heat  
18 input or fuel usage.

19 **Sec. 3.** RCW 80.28.010 and 2011 c 214 s 11 are each amended to  
20 read as follows:

21 (1) All charges made, demanded or received by any gas company,  
22 electrical company, wastewater company, or water company for gas,  
23 electricity or water, or for any service rendered or to be rendered  
24 in connection therewith, shall be just, fair, reasonable and  
25 sufficient. Reasonable charges necessary to cover the cost of  
26 administering the collection of voluntary donations for the purposes  
27 of supporting the development and implementation of evergreen  
28 community management plans and ordinances under RCW 80.28.300 must be  
29 deemed as prudent and necessary for the operation of a utility.

30 (2) Every gas company, electrical company, wastewater company,  
31 and water company shall furnish and supply such service,  
32 instrumentalities and facilities as shall be safe, adequate and  
33 efficient, and in all respects just and reasonable.

34 (3) All rules and regulations issued by any gas company,  
35 electrical company, wastewater company, or water company, affecting  
36 or pertaining to the sale or distribution of its product or service,  
37 must be just and reasonable.

38 (4) Utility service for residential space heating shall not be  
39 terminated between November 15<sup>th</sup> through March 15<sup>th</sup> if the customer:

1 (a) Notifies the utility of the inability to pay the bill,  
2 including a security deposit. This notice should be provided within  
3 five business days of receiving a payment overdue notice unless there  
4 are extenuating circumstances. If the customer fails to notify the  
5 utility within five business days and service is terminated, the  
6 customer can, by paying reconnection charges, if any, and fulfilling  
7 the requirements of this section, receive the protections of this  
8 chapter;

9 (b) Provides self-certification of household income for the prior  
10 twelve months to a grantee of the department of commerce, which  
11 administers federally funded energy assistance programs. The grantee  
12 shall determine that the household income does not exceed the maximum  
13 allowed for eligibility under the state's plan for low-income energy  
14 assistance under 42 U.S.C. 8624 and shall provide a dollar figure  
15 that is seven percent of household income. The grantee may verify  
16 information provided in the self-certification;

17 (c) Has applied for home heating assistance from applicable  
18 government and private sector organizations and certifies that any  
19 assistance received will be applied to the current bill and future  
20 utility bills;

21 (d) Has applied for low-income weatherization assistance to the  
22 utility or other appropriate agency if such assistance is available  
23 for the dwelling;

24 (e) Agrees to a payment plan and agrees to maintain the payment  
25 plan. The plan will be designed both to pay the past due bill by the  
26 following October 15<sup>th</sup> and to pay for continued utility service. If  
27 the past due bill is not paid by the following October 15<sup>th</sup>, the  
28 customer is not eligible for protections under this chapter until the  
29 past due bill is paid. The plan may not require monthly payments in  
30 excess of seven percent of the customer's monthly income plus one-  
31 twelfth of any arrearage accrued from the date application is made  
32 and thereafter during November 15<sup>th</sup> through March 15<sup>th</sup>. A customer  
33 may agree to pay a higher percentage during this period, but shall  
34 not be in default unless payment during this period is less than  
35 seven percent of monthly income plus one-twelfth of any arrearage  
36 accrued from the date application is made and thereafter. If  
37 assistance payments are received by the customer subsequent to  
38 implementation of the plan, the customer shall contact the utility to  
39 reformulate the plan; and

40 (f) Agrees to pay the moneys owed even if he or she moves.

1 (5) The utility shall:

2 (a) Include in any notice that an account is delinquent and that

3 service may be subject to termination, a description of the

4 customer's duties in this section;

5 (b) Assist the customer in fulfilling the requirements under this

6 section;

7 (c) Be authorized to transfer an account to a new residence when

8 a customer who has established a plan under this section moves from

9 one residence to another within the same utility service area;

10 (d) Be permitted to disconnect service if the customer fails to

11 honor the payment program. Utilities may continue to disconnect

12 service for those practices authorized by law other than for

13 nonpayment as provided for in this subsection. Customers who qualify

14 for payment plans under this section who default on their payment

15 plans and are disconnected can be reconnected and maintain the

16 protections afforded under this chapter by paying reconnection

17 charges, if any, and by paying all amounts that would have been due

18 and owing under the terms of the applicable payment plan, absent

19 default, on the date on which service is reconnected; and

20 (e) Advise the customer in writing at the time it disconnects

21 service that it will restore service if the customer contacts the

22 utility and fulfills the other requirements of this section.

23 (6) A payment plan implemented under this section is consistent

24 with RCW 80.28.080.

25 (7) Every gas company and electrical company shall offer

26 residential customers the option of a budget billing or equal payment

27 plan. The budget billing or equal payment plan shall be offered low-

28 income customers eligible under the state's plan for low-income

29 energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1)

30 without limiting availability to certain months of the year, without

31 regard to the length of time the customer has occupied the premises,

32 and without regard to whether the customer is the tenant or owner of

33 the premises occupied.

34 (8) Every gas company, electrical company, wastewater company,

35 and water company shall construct and maintain such facilities in

36 connection with the manufacture and distribution of its product, or

37 provision of its services, as will be efficient and safe to its

38 employees and the public.

1 (9) An agreement between the customer and the utility, whether  
2 oral or written, does not waive the protections afforded under this  
3 chapter.

4 (10) In establishing rates or charges for water service, water  
5 companies as defined in RCW 80.04.010 may consider the achievement of  
6 water conservation goals and the discouragement of wasteful water use  
7 practices.

8 (11)(a) Electrical companies, gas companies, and the commission  
9 shall use the greenhouse gas planning adder when evaluating and  
10 selecting conservation policies, programs, and targets.

11 (b)(i) Electrical companies shall use the greenhouse gas planning  
12 adder in developing and evaluating integrated resource plans pursuant  
13 to chapter 19.280 RCW; and

14 (ii) Gas companies shall use the greenhouse gas planning adder in  
15 developing integrated resource plans that describe a mix of natural  
16 gas, biogas, or synthetic gas and conservation designated to meet  
17 current and future needs at the lowest reasonable costs to the gas  
18 company and its customers.

19 (c) Electrical companies and gas companies shall use the  
20 greenhouse gas planning adder in evaluating and selecting  
21 intermediate-term and long-term resource options.

22 (d) The commission shall use the greenhouse gas planning adder in  
23 evaluating integrated resource plans and intermediate-term and long-  
24 term resource options selected by electrical companies and gas  
25 companies under this subsection.

26 (e) For the purposes of this subsection: (i) Gas consisting  
27 largely of methane and other hydrocarbons derived from the  
28 decomposition of organic material in landfills, wastewater treatment  
29 facilities, and anaerobic digesters must be considered a nonemitting  
30 resource; and (ii) qualified biomass energy must be considered a  
31 nonemitting resource.

32 (f) A multistate electric company with retail customers and  
33 generation located outside the state of Washington shall use the  
34 greenhouse gas planning adder pursuant to this subsection beginning  
35 January 1, 2020.

36 NEW SECTION. Sec. 4. A new section is added to chapter 80.28  
37 RCW to read as follows:

38 (1) The legislature declares that changes in technology and the  
39 structure of the energy industry may produce conditions under which

1 traditional rate of return, rate-based regulation of electrical and  
2 gas companies may not in all cases provide the most efficient and  
3 effective means of achieving the legislature's intent and the public  
4 policy goals of this state as declared in chapters 19.280 and 19.285  
5 RCW and this title. The commission should be authorized to employ an  
6 alternative form of regulation if that alternative is better suited  
7 to achieving those policy goals.

8 (2)(a) Subject to the conditions set forth in this chapter, the  
9 commission may regulate an electrical or gas company by authorizing  
10 an alternative form of regulation. The commission may determine the  
11 manner and extent of any alternative form of regulation as may be  
12 appropriate in the public interest, including, but not limited to,  
13 authorizing an alternative form of regulation for all or individual  
14 utility services.

15 (b) The commission shall consider, to the extent applicable, the  
16 extent to which an alternative form of regulation is expected to:

17 (i) Align utility regulatory incentives with the public interest;

18 (ii) Maintain and enhance the ability of the electrical or gas  
19 company to furnish safe, adequate, and efficient service to its  
20 customers;

21 (iii) Support prudent and efficient use of the electrical or  
22 natural gas system and utility operations;

23 (iv) Maintain and enhance overall electrical or natural gas  
24 system reliability, security, and resilience;

25 (v) Allow an electrical or gas company to support and participate  
26 in market transformation for enabling technologies without harming  
27 competition;

28 (vi) Allow an electrical or gas company to be financially  
29 indifferent as to: (A) The ownership of the property necessary to  
30 furnish service to its customers, except where appropriate for  
31 facilities furnished to establish a person as a customer of the  
32 electrical or gas company; or (B) the quantity of electricity or gas  
33 sold to its customers;

34 (vii) Reasonably protect customers, including low-income  
35 customers, from associated short and long-term risks;

36 (viii) Ensure an appropriate level of consumer protection;

37 (ix) Support the achievement of state emissions reduction goals;

38 (x) Consider adverse environmental impacts;

39 (xi) Provide the electrical or gas company with the opportunity  
40 to earn a reasonable rate of return on investment; and



1 (xii) Provide for broad customer engagement to promote  
2 participation by a diversity of customers, particularly underserved  
3 communities or segments thereof, in the associated programs to help  
4 achieve the criteria identified in this subsection (2)(b).

5 (3) An electrical or gas company may petition the commission to  
6 establish an alternative form of regulation. The electrical or gas  
7 company shall submit with the petition a plan for an alternative form  
8 of regulation, which may include provisions establishing a reasonable  
9 range for rate of return on investment. The plan must contain a  
10 proposal for transition to the alternative form of regulation and the  
11 proposed duration of the plan. The development of a plan, which must  
12 include customer and stakeholder input, shall contain a proposal for  
13 appropriate performance metrics and enforcement or remedial  
14 provisions in the event the company fails to meet such metrics. The  
15 commission also may initiate consideration of alternative forms of  
16 regulation for a company or companies on its own motion. The  
17 commission, after notice and hearing, shall issue an order accepting,  
18 modifying, or rejecting the plan within eleven months after the  
19 petition or motion is filed, unless extended by the commission for  
20 good cause. Nothing in this section may be interpreted as requiring  
21 an electrical or gas company to submit a petition for a plan for an  
22 alternative form of regulation as part of or concurrent with a  
23 general rate case or other proceeding for recovery of costs of such a  
24 company.

25 (4) Not later than sixty days from the entry of the commission's  
26 order, the electrical or gas company affected by the order shall file  
27 with the commission: (a) An election to proceed with the alternative  
28 form of regulation as authorized by the commission; or (b) an  
29 election not to proceed with the alternative form of regulation as  
30 authorized by the commission.

31 (5) The commission may waive such a regulatory requirement under  
32 this title for an electrical or gas company subject to an alternative  
33 form of regulation as may be appropriate to facilitate the  
34 implementation of this section. However, as part of a proceeding to  
35 consider alternative forms of regulation, the commission may not  
36 waive any grant of legal rights to any person contained in this  
37 chapter and chapter 80.04 RCW. The commission may waive different  
38 regulatory requirements for different electrical or gas companies or  
39 services if the different treatment is in the public interest.

1 (6) Upon petition by the electrical or gas company, or on motion  
2 by the commission when evaluating the achievement of metrics  
3 developed in subsection (3) of this section, and after notice and  
4 hearing, the commission may rescind or modify an alternative form of  
5 regulation in the manner requested by the electrical or gas company.

6 (7) The commission or any person may file a complaint under RCW  
7 80.04.110 alleging that an electrical or gas company under an  
8 alternative form of regulation has not complied with the terms and  
9 conditions set forth in the alternative form of regulation. The  
10 complainant bears the burden of proving the allegations in the  
11 complaint.

12 (8) During a state of emergency declared under RCW 43.06.010(12),  
13 the governor may waive or suspend the operation or enforcement of  
14 this section or any portion of this section or under any  
15 administrative rule, and issue any orders to facilitate the operation  
16 of state or local government or to promote and secure the safety and  
17 protection of the civilian population.

18 (9) The provisions of this section apply only to alternative  
19 forms of regulation submitted to the commission pursuant to this  
20 section. Nothing contained in this section may be construed to alter,  
21 amend, repeal, modify, interpret, or be in conflict with this  
22 chapter. Nothing in this section may be construed to expand or alter  
23 the commission's jurisdiction to regulate in the public interest and  
24 ensure just, fair, reasonable, and sufficient rates for electrical  
25 and gas companies.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.28  
27 RCW to read as follows:

28 (1) After notice and a hearing, the commission may order one or  
29 more electrical companies to provide direct access to nonresidential  
30 customers or to a subset of nonresidential customers if the  
31 commission finds that doing so is in the public interest.

32 (2) For the purposes of this section, "direct access" means the  
33 ability of a customer of an electrical company, as a consequence of a  
34 commission order issued under this section, to purchase electricity  
35 and certain ancillary services at retail directly from an entity  
36 other than the electrical company that is responsible for delivering  
37 electricity to the customer."

38 Correct the title.

EFFECT: Amends the requirement for the development of a plan for an alternative form of regulation by removing reference to certain specific performance metrics that must be included in the plan. Adds a statement declaring that nothing in the provisions authorizing an alternative form of regulation may be construed to alter, amend, repeal, modify, interpret, or be in conflict with chapter 80.28 RCW, or to expand or alter the jurisdiction and rate making responsibilities of the utilities and transportation commission (UTC). Adds a section authorizing the UTC to order one or more electrical companies to provide direct access to nonresidential customers or to a subset of nonresidential customers. Defines "direct access." Amends the statement of legislative intent.

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