
SENATE BILL 5293

State of Washington

66th Legislature

2019 Regular Session

By Senators Carlyle, Nguyen, Palumbo, Das, Billig, Kuderer, Keiser, McCoy, Hunt, Lias, Frockt, Pedersen, and Wellman; by request of Governor Inslee

Read first time 01/17/19. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to energy efficiency; amending RCW 19.27A.140,
2 19.27A.170, 19.27A.015, 19.27A.020, 19.27A.025, and 19.27.540; adding
3 new sections to chapter 19.27A RCW; adding a new section to chapter
4 82.16 RCW; adding new sections to chapter 80.28 RCW; creating new
5 sections; prescribing penalties; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that state
8 policy encouraging energy efficiency has been extremely successful in
9 reducing energy use, avoiding costly investment in new generating
10 capacity, lowering customer energy bills, and reducing air pollution
11 and greenhouse gas emissions. The state's 2019 biennial energy report
12 indicates that utility conservation investments under chapter 19.285
13 RCW, the energy independence act, now save consumers more than seven
14 hundred fifty million dollars annually, helping to keep Washington's
15 electricity prices among the lowest in the nation.

16 (2) Studies by the Northwest power and conservation council and
17 by individual Washington utilities repeatedly show that efficiency is
18 the region's largest, cheapest, lowest risk energy resource; that
19 without it, the Northwest would have needed to invest in additional
20 natural gas-fired generation; and that, looking ahead, efficiency can
21 approach the size of the region's hydropower system as a regional

1 resource. The Northwest power and conservation council forecasts that
2 with an aggressive new energy efficiency policy, the region can
3 potentially meet one hundred percent of its electricity load growth
4 over the next twenty years with energy efficiency.

5 (3) Energy efficiency investments that reduce energy use in
6 buildings bring cobenefits that directly impact Washingtonians'
7 quality of life. These benefits include improved indoor air quality,
8 more comfortable homes and workplaces, and lower tenant energy bills.
9 The legislature notes that according to the United States department
10 of energy's energy and employment report, 2017, the energy efficiency
11 sector has created more than sixty-five thousand jobs in the state,
12 more than two-thirds of which are in the construction sector, and
13 that the number continues to grow.

14 (4) Considering the benefits of and the need for additional
15 energy efficiency to meet regional energy demand, the legislature
16 notes that attaining as much of this resource as possible from the
17 buildings sector can have a significant effect on state greenhouse
18 gas emissions by deferring or displacing the need for natural gas-
19 fired electricity generation and reducing the direct use of natural
20 gas. Buildings represent the second largest source of greenhouse gas
21 emissions in Washington and emissions from the buildings sector have
22 grown by fifty percent since 1990, far outpacing all other emission
23 sources.

24 (5) The legislature therefore determines that it is in the
25 state's interest to maximize the full potential of energy efficiency
26 standards, retrofit incentives, utility programs, and building codes
27 to keep energy costs low and to meet statutory goals for increased
28 building efficiency and reduced greenhouse gas emissions.

29 (6) It is the intent of this act to provide incentives and
30 regulations that encourage greater energy efficiency in all aspects
31 of new and existing buildings, including building design, energy
32 delivery, and utilization and operations. This act:

33 (a) Establishes energy performance standards for larger existing
34 commercial buildings;

35 (b) Provides financial incentives and technical assistance for
36 building owners taking early action to meet these standards before
37 they are required to be met;

38 (c) Enhances access to commercial building energy consumption
39 data in order to assist with monitoring progress toward meeting
40 energy performance standards;

1 (d) Authorizes local governments to voluntarily adopt energy
2 codes for residential structures that achieve even greater energy
3 savings and greenhouse gas reductions than the minimum state energy
4 code; and

5 (e) Establishes efficiency performance requirements for natural
6 gas distribution companies, recognizing the significant contribution
7 of natural gas to the state's greenhouse gas emissions, the role that
8 natural gas plays in heating buildings and powering equipment within
9 buildings across the state, and the greenhouse gas reduction benefits
10 associated with substituting renewable natural gas for fossil fuels.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A
12 RCW to read as follows:

13 The definitions in this section apply throughout sections 3
14 through 6 of this act unless the context clearly requires otherwise.

15 (1) "Agricultural structure" means a structure designed and
16 constructed to house farm implements, hay, grain, poultry, livestock,
17 or other horticultural products, and that is not a place used by the
18 public or a place of human habitation or employment where
19 agricultural products are processed, treated, or packaged.

20 (2) "Baseline energy use intensity" means a building's weather
21 normalized energy use intensity measured the year prior to making an
22 application for an incentive under section 4 of this act.

23 (3) "Building owner" means an individual or entity possessing
24 title to a building.

25 (4) "Building tenant" means a person or entity occupying or
26 holding possession of a building or premises pursuant to a rental
27 agreement.

28 (5) "Conditional compliance" means a temporary compliance method
29 used by building owners that demonstrate the owner has implemented
30 energy use reduction strategies required by the standard, but has not
31 demonstrated full compliance with the energy use intensity target.

32 (6) "Consumer-owned utility" has the same meaning as defined in
33 RCW 19.27A.140.

34 (7) "Covered commercial building" means a building where the sum
35 of nonresidential, hotel, motel, and dormitory floor areas exceeds
36 fifty thousand gross square feet, excluding the parking garage area.

37 (8) "Department" means the department of commerce.

38 (9) "Director" means the director of the department of commerce
39 or the director's designee.

1 (10) "Electric utility" means a consumer-owned utility or an
2 investor-owned utility.

3 (11) "Eligible building owner" means: (a) The owner of a covered
4 commercial building required to comply with the standard established
5 in section 3 of this act; or (b) the owner of a multifamily
6 residential building where the floor area exceeds fifty thousand
7 gross square feet, excluding the parking garage area.

8 (12) "Energy" includes: Electricity, including electricity
9 delivered through the electric grid and electricity generated at the
10 building premises using solar or wind energy resources; natural gas;
11 district steam; district hot water; district chilled water; propane;
12 fuel oil; wood; coal; or other fuels used to meet the energy loads of
13 a building.

14 (13) "Energy use intensity" means a measurement that normalizes a
15 building's site energy use relative to its size. A building's energy
16 use intensity is calculated by dividing the total net energy consumed
17 in one year by the gross floor area of the building, excluding the
18 parking garage. "Energy use intensity" is reported as a value of
19 thousand British thermal units per square foot.

20 (14) "Energy use intensity target" means the net energy use
21 intensity of a covered commercial building that has been established
22 for the purposes of complying with the standard established under
23 section 3 of this act.

24 (15) "Gas company" includes every corporation, company,
25 association, joint stock association, partnership, and person, their
26 lessees, trustees, or receiver appointed by any court whatsoever, and
27 every city or town owning, controlling, operating, or managing any
28 gas plant within this state.

29 (16) "Greenhouse gas" includes carbon dioxide, methane, nitrous
30 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

31 (17)(a) "Gross floor area" means the total number of square feet
32 measured between the exterior surfaces of the enclosing fixed walls
33 of a building, including all supporting functions such as offices,
34 lobbies, restrooms, equipment storage areas, mechanical rooms, break
35 rooms, and elevator shafts.

36 (b) "Gross floor area" does not include outside bays or docks.

37 (18) "Investor-owned utility" means a company owned by investors,
38 that meets one of the definitions of RCW 80.04.010, and that is
39 engaged in distributing electricity to more than one retail electric
40 customer in the state.

1 (19) "Multifamily residential building" means a building
2 containing sleeping units or more than two dwelling units where
3 occupants are primarily permanent in nature.

4 (20) "Net energy use" means the sum of metered and bulk fuel
5 energy entering the building, minus the sum of metered energy leaving
6 the building.

7 (21) "Qualifying utility" means a consumer-owned or investor-
8 owned gas or electric utility that serves more than twenty-five
9 thousand customers in the state of Washington.

10 (22) "Savings-to-investment ratio" means the ratio of the present
11 value savings to the present value costs of an energy or water
12 conservation measure. The numerator of the ratio is the present value
13 of net savings in energy or water and nonfuel or nonwater operation
14 and maintenance costs attributable to the proposed energy or water
15 conservation measure. The denominator of the ratio is the present
16 value of the net increase in investment and replacement costs less
17 salvage value attributable to the proposed energy or water
18 conservation measure.

19 (23) "Standard" means the state energy performance standard for
20 covered commercial buildings established under section 3 of this act.

21 (24) "Thermal energy company" has the same meaning as defined in
22 RCW 80.04.550.

23 (25) "Weather normalized" means a method for modifying the
24 measured building energy use in a specific weather year to energy use
25 under normal weather conditions.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A
27 RCW to read as follows:

28 (1)(a) By July 1, 2020, the department must establish by rule a
29 state energy performance standard for covered commercial buildings.

30 (b) In developing energy performance standards, the department
31 shall seek to maximize reductions of greenhouse gas emissions from
32 the building sector. The standard must include energy use intensity
33 targets by building type and methods of conditional compliance that
34 include an energy management plan, operations and maintenance
35 program, energy efficiency audits, and investment in energy
36 efficiency measures designed to meet the targets. The standard must
37 include technical and professional requirements for implementation.
38 The department shall use ANSI/ASHRAE/IES standard 100-2018 as a model

1 for standard development. The department must update the standard by
2 July 1, 2029, and every five years thereafter.

3 (2) In establishing the standard under subsection (1) of this
4 section, the department:

5 (a) Must develop energy use intensity targets that are no greater
6 than the average energy use intensity for the covered commercial
7 building occupancy type. The department must also develop energy use
8 intensity targets for additional property types eligible for
9 incentives in section 4 of this act. The department must consider
10 regional and local building energy utilization data, such as existing
11 energy star benchmarking data, in establishing targets for the
12 standard;

13 (b) May consider building occupancy classifications from ANSI/
14 ASHRAE/IES standard 100-2018 and the United States environmental
15 protection agency's energy star portfolio manager when developing
16 energy use intensity targets;

17 (c) May implement lower energy use intensity targets for more
18 recently built covered commercial buildings based on the state energy
19 code in place when the buildings were constructed;

20 (d)(i) Must adopt a conditional compliance method that ensures
21 that covered commercial buildings that do not meet the specified
22 energy use intensity targets are taking action to achieve reduction
23 in energy use, including investment criteria for conditional
24 compliance that ensure that energy efficiency measures identified by
25 energy audits are implemented to achieve a covered commercial
26 building's energy use intensity target. The criteria must require
27 that a building owner adopts all energy efficiency measures required
28 to meet the energy use intensity target, or based on a thirty year
29 life-cycle cost analysis, the building owner must adopt an optimized
30 bundle of energy efficiency measures that provides maximum energy
31 savings without resulting in an savings-to-investment ratio of less
32 than 1.0, except as exempted in (d)(ii) of this subsection. The
33 building owner's cost for implementing energy efficiency measures
34 must be net cost, excluding the cost covered by utility or government
35 grants;

36 (ii) For those buildings or structures that are listed in the
37 state or national register of historic places; designated as a
38 historic property under local or state designation law or survey;
39 certified as a contributing resource with a national register listed
40 or locally designated historic district; or with an opinion or

1 certification that the property is eligible to be listed on the
2 national or state registers of historic places either individually or
3 as a contributing building to a historic district by the state
4 historic preservation officer or the keeper of the national register
5 of historic places, no individual energy efficiency requirement need
6 be met that would compromise the historical integrity of a building
7 or part of a building.

8 (3) Based on records obtained from each county assessor and other
9 available information sources, the department must create a database
10 of covered commercial buildings and building owners required to
11 comply with the standard established in accordance with this section.

12 (4) By July 1, 2021, the department must provide the owners of
13 covered buildings with notification of compliance requirements.

14 (5) The department must develop a method for administering
15 compliance reports from building owners.

16 (6) The department must provide a customer support program to
17 building owners including, but not limited to, outreach and
18 informational material, periodic training, phone and email support,
19 and other technical assistance.

20 (7) The building owner of a covered commercial building must
21 report the building owner's compliance with the standard to the
22 department in accordance with the schedule established under
23 subsection (8) of this section and every five years thereafter. For
24 each reporting date, the building owner must submit documentation to
25 demonstrate that:

26 (a) The weather normalized energy use intensity of the covered
27 commercial building measured in the previous calendar year is less
28 than or equal to the energy use intensity target;

29 (b) The covered commercial building has received conditional
30 compliance from the department based on energy efficiency actions
31 prescribed by the standard; or

32 (c) The covered commercial building is exempt from the standard
33 by demonstrating that the building meets one of the following
34 criteria:

35 (i) The building did not have a certificate of occupancy or
36 temporary certificate of occupancy for all twelve months of the
37 calendar year prior to the building owner compliance schedule
38 established under subsection (8) of this section;

39 (ii) The building did not have an average physical occupancy of
40 at least fifty percent throughout the calendar year prior to the

1 building owner compliance schedule established under subsection (8)
2 of this section;

3 (iii) The sum of the buildings gross floor area minus
4 unconditioned and semiconditioned spaces, as defined in the
5 Washington state energy code, is less than fifty thousand square
6 feet;

7 (iv) The primary use of the building is manufacturing or other
8 industrial purposes, as defined under the following use designations
9 of the international building code: (A) Factory group F; or (B) high
10 hazard group H;

11 (v) The building is an agricultural structure; or

12 (vi) The building meets at least one of the following conditions
13 of financial hardship: (A) The building had arrears of property taxes
14 or water or wastewater charges that resulted in the building's
15 inclusion, within the prior two years, on a city's or county's annual
16 tax lien sale list; (B) the building has a court appointed receiver
17 in control of the asset due to financial distress; (C) the building
18 is owned by a financial institution through default by a borrower;
19 (D) the building has been acquired by a deed in lieu of foreclosure
20 within the previous twenty-four months; (E) the building has a senior
21 mortgage subject to a notice of default; or (F) other conditions of
22 financial hardship identified by the department by rule.

23 (8) A building owner of a covered commercial building must meet
24 the following reporting schedule for complying with the standard
25 established under this section:

26 (a) For a building with more than two hundred twenty thousand
27 gross square feet, June 1, 2026;

28 (b) For a building with more than ninety thousand gross square
29 feet but less than two hundred twenty thousand and one gross square
30 feet, June 1, 2027; and

31 (c) For a building with more than fifty thousand gross square
32 feet but less than ninety thousand and one square feet, June 1, 2028.

33 (9) The department may issue a notice of violation to a building
34 owner for noncompliance with the requirements of this section. A
35 determination of noncompliance may be made for any of the following
36 reasons:

37 (a) Failure to submit a compliance report in the form and manner
38 prescribed by the department;

39 (b) Failure to meet an energy use intensity target or failure to
40 receive conditional compliance approval;

1 (c) Failure to provide accurate reporting consistent with the
2 requirements of the standard established under this section; and

3 (d) Failure to provide a valid exemption certificate.

4 (10) The department is authorized to impose an administrative
5 penalty upon a building owner for failing to submit documentation
6 demonstrating compliance with the requirements of this section. The
7 penalty may not exceed an amount equal to five thousand dollars plus
8 an amount based on the duration of any continuing violation. The
9 additional amount for a continuing violation may not exceed a daily
10 amount equal to one dollar per year per gross square foot of floor
11 area. The department may by rule increase the maximum penalty rates
12 to adjust for the effects of inflation.

13 (11) Administrative penalties collected under this section must
14 be deposited into the low-income weatherization and structural
15 rehabilitation assistance account created in RCW 70.164.030.

16 (12) The department must adopt rules as necessary to implement
17 this section, including but not limited to:

18 (a) Rules necessary to ensure timely, accurate, and complete
19 reporting of building energy performance for all covered commercial
20 buildings;

21 (b) Rules necessary to enforce the standard established under
22 this section; and

23 (c) Rules that provide a mechanism for appeal of any
24 administrative penalty imposed by the department under this section.

25 (13) Upon request by the department, each county assessor must
26 provide property data from existing records to the department as
27 necessary to implement this section.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.27A
29 RCW to read as follows:

30 (1) The department must establish a state energy performance
31 standard early adoption incentive program consistent with the
32 requirements of this section.

33 (2) The department must adopt application and reporting
34 requirements for the incentive program. Building energy reporting for
35 the incentive program must be consistent with the energy reporting
36 requirements established under section 3 of this act.

37 (3) The department must establish professional qualifications for
38 persons completing building energy reporting required for the

1 incentive program. Building energy use intensity reporting must be
2 completed by persons meeting the required professional qualification.

3 (4) Upon receiving documentation demonstrating that a building
4 owner qualifies for an incentive under this section, the department
5 must authorize each applicable entity administering incentive
6 payments, as provided in section 6 of this act, to make an incentive
7 payment to the building owner. When a building is served by more than
8 one entity offering incentives, incentive payments must be
9 proportional to the energy use intensity reduction of the specific
10 fuel provided by each entity.

11 (5) An eligible building owner may receive an incentive payment
12 in the amounts specified in subsections (7) and (8) of this section
13 only if the following requirements are met:

14 (a) The building is either: (i) A covered commercial building
15 subject to the requirements of the standard established under section
16 3 of this act; or (ii) a multifamily residential building where the
17 floor area exceeds fifty thousand gross square feet, excluding the
18 parking garage area;

19 (b) The building's baseline energy use intensity exceeds its
20 applicable energy use intensity target by at least fifteen energy use
21 intensity units;

22 (c) At least one electric utility, gas company, or thermal energy
23 company providing or delivering energy to the covered commercial
24 building is participating in the incentive program by administering
25 incentive payments as provided in section 6 of this act; and

26 (d) The building owner complies with any other requirements
27 established by the department.

28 (6)(a) An eligible building owner who meets the requirements of
29 subsection (5) of this section may submit an application to the
30 department for an incentive payment in a form and manner prescribed
31 by the department. The application must be submitted in accordance
32 with the following schedule:

33 (i) For a building with more than two hundred twenty thousand
34 gross square feet, beginning January 1, 2021, through June 1, 2025;

35 (ii) For a building with more than ninety thousand gross square
36 feet but less than two hundred twenty thousand and one gross square
37 feet, beginning January 1, 2021, through June 1, 2026; and

38 (iii) For a building with more than fifty thousand gross square
39 feet but less than ninety thousand and one gross square feet,
40 beginning January 1, 2021, through June 1, 2027.

1 (b) The department must review each application and determine
2 whether the applicant is eligible for the incentive program and if
3 funds are available for the incentive payment within the limitation
4 established in section 5 of this act. If the department certifies an
5 application, it must provide verification to the building owner and
6 each entity participating as provided in section 6 of this act and
7 providing service to the building owner.

8 (7) An eligible building owner that demonstrates early compliance
9 with the applicable energy use intensity target under the standard
10 established under section 3 of this act may receive a base incentive
11 payment of fifty cents per square foot of floor area.

12 (8) An eligible building owner that qualifies for the base
13 incentive under subsection (9) of this section and demonstrates
14 compliance with the applicable energy use intensity target for the
15 next three consecutive years may receive an additional incentive
16 payment of thirty-five cents per square foot of floor area.

17 (9) The incentives provided in subsections (7) and (8) of this
18 section are subject to the limitations and requirements of this
19 section, including any rules or procedures implementing this section.

20 (10) The department must establish requirements for the
21 verification of energy consumption by the building owner and each
22 participating electric utility, gas company, and thermal energy
23 company.

24 (11) The department must provide an administrative process for an
25 eligible building owner to appeal a determination of an incentive
26 eligibility or amount.

27 (12) By September 30, 2025, and every two years thereafter, the
28 department must report to the appropriate committees of the
29 legislature on the results of the incentive program under this
30 section and may provide recommendations to improve the effectiveness
31 of the program.

32 (13) The department may adopt rules to implement this section.

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.27A
34 RCW to read as follows:

35 The department may not issue a certification for an incentive
36 application under section 4 of this act if doing so is likely to
37 result in total incentive payments under section 4 of this act in
38 excess of seventy-five million dollars.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.27A
2 RCW to read as follows:

3 (1) Each qualifying utility must administer incentive payments
4 for the state energy performance standard early adoption incentive
5 program established in section 4 of this act, consistent with the
6 requirements of this section. Any thermal energy company, electric
7 utility, or gas company not otherwise required to administer
8 incentive payments may voluntarily participate by providing notice to
9 the department in a form and manner prescribed by the department.

10 (2) An entity that administers the payments for the incentive
11 program under this section must administer the program in a manner
12 that is consistent with the standard established and any rules
13 adopted by the department under sections 3 and 4 of this act.

14 (3) Upon receiving notification from the department that a
15 building owner has qualified for an incentive payment, each entity
16 that administers incentive payments under this section must make
17 incentive payments to its customers who are eligible building owners
18 of covered commercial buildings and multifamily residential buildings
19 who qualify as provided under this section and at rates specified in
20 section 4 (7) and (8) of this act. When a building is served by more
21 than one entity administering incentive payments, incentive payments
22 must be proportional to the energy use intensity reduction of the
23 participating entities' fuel.

24 (4) The participation by an entity in the administration of
25 incentive payments under this section does not relieve the entity of
26 any obligation that may otherwise exist or be established to provide
27 customer energy efficiency programs or incentives. Energy efficiency
28 savings achieved through an incentive program that are unique from
29 any other savings claims may be used by the entity to meet regulatory
30 requirements to acquire conservation and energy savings, unless
31 otherwise prohibited or restricted by law.

32 NEW SECTION. **Sec. 7.** This section is the tax preference
33 performance statement for the tax preference contained in section 8,
34 chapter . . ., Laws of 2019 (section 8 of this act). This performance
35 statement is only intended to be used for subsequent evaluation of
36 the tax preference. It is not intended to create a private right of
37 action by any party or be used to determine eligibility for
38 preferential tax treatment.

1 (1) The legislature categorizes this tax preference as one
2 intended to induce implementation of building energy efficiency
3 measures, as indicated in section 4 of this act.

4 (2) It is the legislature's specific public policy objective to
5 increase energy efficiency and the use of renewable fuels that reduce
6 the amount of greenhouse gas emissions in Washington. It is the
7 legislature's intent to provide a credit against the taxes owing by
8 utilities under chapter 82.16 RCW for the incentives provided for the
9 implementation by eligible building owners of energy efficiency and
10 renewable energy measures.

11 (3) The joint legislative audit and review committee is not
12 required to perform a tax preference review under chapter 43.136 RCW
13 for the tax preference contained in section 8, chapter . . ., Laws of
14 2019 (section 8 of this act), and it is the intent of the legislature
15 to allow the tax preferences to expire upon its scheduled expiration
16 date.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.16
18 RCW to read as follows:

19 (1) Subject to the requirements of this section, a light and
20 power business or a gas distribution business is allowed a credit
21 against taxes due under this chapter in an amount equal to:

22 (a) Incentive payments made in any calendar year under section 4
23 of this act; and

24 (b) Documented administrative cost not to exceed five percent of
25 the incentive payments.

26 (2) The credit must be taken in a form and manner as required by
27 the department.

28 (3) Credit must be claimed against taxes due under this chapter
29 for the same calendar year in which the incentive payments were made
30 and administrative expenses incurred. Credit earned in one calendar
31 year may not be carried forward or backward and claimed against taxes
32 due under this chapter for a different calendar year. The credit may
33 not exceed the tax that would otherwise be due under this chapter.
34 Refunds may not be granted in the place of a credit.

35 (4) (a) Except as provided in (c) of this subsection, any business
36 that has claimed credit in excess of the amount of credit the
37 business earned under subsection (1) of this section must repay the
38 amount of tax against which the excess credit was claimed.

1 (b) The department must assess interest on the taxes due under
2 this subsection. Interest must be assessed at the rate provided for
3 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
4 date the credit was claimed, and accrues until the taxes against
5 which the credit was claimed are repaid. The department must provide
6 written notice of the amount due under this subsection and that the
7 amount due must be paid within thirty days of the date of the notice.
8 The department may not impose penalties as provided in chapter 82.32
9 RCW on taxes due under this subsection unless the amount due is not
10 paid in full by the due date in the notice.

11 (c) A business is not liable for excess credits claimed in
12 reliance on amounts reported to the business by the department of
13 commerce as due and payable as provided under section 4 of this act,
14 if such amounts are later found to be abnormal or inaccurate due to
15 no fault of the business.

16 (5) The amount of credit taken under this section and the
17 identity of a business that takes the credit is not confidential
18 taxpayer information under RCW 82.32.330 and is subject to
19 disclosure.

20 (6) This section expires June 30, 2032.

21 **Sec. 9.** RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each
22 amended to read as follows:

23 The definitions in this section apply to RCW 19.27A.130 through
24 19.27A.190 and 19.27A.020 unless the context clearly requires
25 otherwise.

26 (1) "Benchmark" means the energy used by a facility as recorded
27 monthly for at least one year and the facility characteristics
28 information inputs required for a portfolio manager.

29 (2) "Conditioned space" means conditioned space, as defined in
30 the Washington state energy code.

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

- 1 (4) "Cost-effectiveness" means that a project or resource is
2 forecast:
- 3 (a) To be reliable and available within the time it is needed;
4 and
- 5 (b) To meet or reduce the power demand of the intended consumers
6 at an estimated incremental system cost no greater than that of the
7 least-cost similarly reliable and available alternative project or
8 resource, or any combination thereof.
- 9 (5) "Council" means the state building code council.
- 10 (6) "Embodied energy" means the total amount of fossil fuel
11 energy consumed to extract raw materials and to manufacture,
12 assemble, transport, and install the materials in a building and the
13 life-cycle cost benefits including the recyclability and energy
14 efficiencies with respect to building materials, taking into account
15 the total sum of current values for the costs of investment, capital,
16 installation, operating, maintenance, and replacement as estimated
17 for the lifetime of the product or project.
- 18 (7) "Energy consumption data" means the monthly amount of energy
19 consumed by a customer as recorded by the applicable energy meter for
20 the most recent twelve-month period.
- 21 (8) "Energy service company" has the same meaning as in RCW
22 43.19.670.
- 23 (9) "Enterprise services" means the department of enterprise
24 services.
- 25 (10) "Greenhouse gas" and "greenhouse gases" includes carbon
26 dioxide, methane, nitrous oxide, hydrofluorocarbons,
27 perfluorocarbons, and sulfur hexafluoride.
- 28 (11) "Investment grade energy audit" means an intensive
29 engineering analysis of energy efficiency and management measures for
30 the facility, net energy savings, and a cost-effectiveness
31 determination.
- 32 (12) "Investor-owned utility" means a corporation owned by
33 investors that meets the definition of "corporation" as defined in
34 RCW 80.04.010 and is engaged in distributing either electricity or
35 natural gas, or both, to more than one retail electric customer in
36 the state.
- 37 (13) "Major facility" means any publicly owned or leased
38 building, or a group of such buildings at a single site, having ten
39 thousand square feet or more of conditioned floor space.

1 (14) "National energy performance rating" means the score
2 provided by the energy star program, to indicate the energy
3 efficiency performance of the building compared to similar buildings
4 in that climate as defined in the United States environmental
5 protection agency "ENERGY STAR® Performance Ratings Technical
6 Methodology."

7 (15) "Net zero energy use" means a building with net energy
8 consumption of zero over a typical year.

9 (16) "Portfolio manager" means the United States environmental
10 protection agency's energy star portfolio manager or an equivalent
11 tool adopted by the department of enterprise services.

12 (17) "Preliminary energy audit" means a quick evaluation by an
13 energy service company of the energy savings potential of a building.

14 (18) "Qualifying public agency" includes all state agencies,
15 colleges, and universities.

16 (19) "Qualifying utility" means a consumer-owned or investor-
17 owned gas or electric utility that serves more than twenty-five
18 thousand customers in the state of Washington.

19 (20) "Reporting public facility" means any of the following:

20 (a) A building or structure, or a group of buildings or
21 structures at a single site, owned by a qualifying public agency,
22 that exceed ten thousand square feet of conditioned space;

23 (b) Buildings, structures, or spaces leased by a qualifying
24 public agency that exceeds ten thousand square feet of conditioned
25 space, where the qualifying public agency purchases energy directly
26 from the investor-owned or consumer-owned utility;

27 (c) A wastewater treatment facility owned by a qualifying public
28 agency; or

29 (d) Other facilities selected by the qualifying public agency.

30 (21) "State portfolio manager master account" means a portfolio
31 manager account established to provide a single shared portfolio that
32 includes reports for all the reporting public facilities.

33 (22) "Building owner" has the same meaning as defined in section
34 2 of this act.

35 (23) "Covered commercial building" has the same meaning as
36 defined in section 2 of this act.

37 **Sec. 10.** RCW 19.27A.170 and 2009 c 423 s 6 are each amended to
38 read as follows:

1 (1) On and after January 1, 2010, qualifying utilities shall
2 maintain records of the energy consumption data of all nonresidential
3 and qualifying public agency buildings to which they provide service.
4 This data must be maintained for at least the most recent twelve
5 months in a format compatible for uploading to the United States
6 environmental protection agency's energy star portfolio manager.

7 (2) On and after January 1, 2010, upon the written authorization
8 or secure electronic authorization of a nonresidential building owner
9 or operator, a qualifying utility shall upload the energy consumption
10 data for the accounts specified by the owner or operator for a
11 building to the United States environmental protection agency's
12 energy star portfolio manager in a form that does not disclose
13 personally identifying information.

14 (3) In carrying out the requirements of this section, a
15 qualifying utility shall use any method for providing the specified
16 data in order to maximize efficiency and minimize overall program
17 cost. Qualifying utilities are encouraged to consult with the United
18 States environmental protection agency and their customers in
19 developing reasonable reporting options.

20 (4) Disclosure of nonpublic nonresidential benchmarking data and
21 ratings required under subsection (5) of this section will be phased
22 in as follows:

23 (a) By January 1, 2011, for buildings greater than fifty thousand
24 square feet; and

25 (b) By January 1, 2012, for buildings greater than ten thousand
26 square feet.

27 (5) Based on the size guidelines in subsection (4) of this
28 section, a building owner or operator, or their agent, of a
29 nonresidential building shall disclose the United States
30 environmental protection agency's energy star portfolio manager
31 benchmarking data and ratings to a prospective buyer, lessee, or
32 lender for the most recent continuously occupied twelve-month period.
33 A building owner or operator, or their agent, who delivers United
34 States environmental protection agency's energy star portfolio
35 manager benchmarking data and ratings to a prospective buyer, lessee,
36 or lender is not required to provide additional information regarding
37 energy consumption, and the information is deemed to be adequate to
38 inform the prospective buyer, lessee, or lender regarding the United
39 States environmental protection agency's energy star portfolio
40 manager benchmarking data and ratings for the most recent twelve-

1 month period for the building that is being sold, leased, financed,
2 or refinanced.

3 (6) Notwithstanding subsections (4) and (5) of this section,
4 nothing in this section increases or decreases the duties, if any, of
5 a building owner, operator, or their agent under this chapter or
6 alters the duty of a seller, agent, or broker to disclose the
7 existence of a material fact affecting the real property.

8 (7) An electric or gas utility that is not a qualifying utility
9 must either offer the upload service specified in subsection (2) of
10 this section or provide customers who are building owners of covered
11 commercial buildings with consumption data in an electronic document
12 formatted for direct upload to the United States environmental
13 protection agency's energy star portfolio manager. Within sixty days
14 of receiving a written or electronic request and authorization of a
15 building owner, the utility must provide the building owner with
16 monthly energy consumption data as required to benchmark the
17 specified building.

18 (8) For any covered commercial building with three or more
19 tenants, an electric or gas utility that is not a qualifying utility
20 must, upon request of the building owner, provide the building owner
21 with aggregated monthly energy consumption data without requiring
22 prior consent from tenants.

23 (9) Qualifying utilities must ensure that all data provided in
24 compliance with this section does not contain personally identifiable
25 information or customer-specific billing information about tenants of
26 a covered commercial building.

27 NEW SECTION. Sec. 11. (1) The legislature finds that natural
28 gas is a fossil fuel, the burning of which produces carbon dioxide
29 pollution, and the production, distribution, and transmission of
30 which results in the leakage of methane, an extremely potent
31 greenhouse gas. In 2014, the intergovernmental panel on climate
32 change found that the global warming potential for methane gas is
33 eighty-four times that of carbon dioxide over a twenty-year period
34 and twenty-eight times that of carbon dioxide over a one hundred year
35 period. Washington has adopted targets to reduce greenhouse gas
36 emissions, in order to mitigate the impacts of climate change on the
37 environment, economy, health, and livelihoods. Natural gas is used as
38 a fuel in Washington to generate electricity, move vehicles and
39 vessels, fuel industrial processes, and heat water and buildings.

1 Under current policy, natural gas usage in Washington and associated
2 greenhouse gas emissions have nearly doubled since 1990. Current
3 state policy does not take recent scientific findings into account.

4 (2) It is the policy of the state to make progress toward
5 limiting and reducing fossil-based natural gas consumption where
6 cleaner options exist or can be developed. In order to reach short-
7 term and long-term emissions goals, Washington needs to improve the
8 efficiency of natural gas consumption, switch to cleaner options when
9 they are available, and reduce the carbon intensity of natural gas.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 80.28
11 RCW to read as follows:

12 Each gas company must identify and acquire all conservation
13 measures that are available and cost-effective. Each company must
14 establish an acquisition target every two years and must demonstrate
15 that the target will result in the acquisition of all resources
16 identified as available and cost-effective. The cost-effectiveness
17 analysis required by this section must include the costs of
18 greenhouse gas emissions established in section 15 of this act. The
19 targets must be based on a conservation potential assessment prepared
20 by an independent third party and approved by the commission.
21 Conservation targets must be approved by order by the commission. The
22 initial conservation target must take effect by 2022.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 80.28
24 RCW to read as follows:

25 (1) The commission must establish for each gas company a schedule
26 of annual minimum renewable natural gas acquisition targets as a
27 percentage of the company's total quantity sales to retail customers.
28 In establishing the annual targets, the commission must consider the
29 state's greenhouse gas emissions reduction goals, the costs of
30 greenhouse gas emissions established in section 15 of this act, other
31 potential end uses for renewable natural gas that are in the public
32 interest, and the potential costs of renewable natural gas relative
33 to fossil fuel natural gas. The initial renewable natural gas target
34 must take effect by 2022.

35 (2) The environmental attributes of renewable natural gas used to
36 comply with the requirements of this section must be retired using
37 procedures established by the commission and may not be used for any

1 other purpose. The commission must approve procedures for banking and
2 transfer of environmental attributes.

3 (3) The commission may approve pilot programs for procurement of
4 renewable natural gas.

5 (4) As used in this section, "renewable natural gas" includes
6 renewable natural gas as defined in RCW 54.04.190. The commission may
7 approve use of another source of gas for compliance with a target if
8 it is produced without consumption of fossil fuels.

9 NEW SECTION. **Sec. 14.** A new section is added to chapter 80.28
10 RCW to read as follows:

11 In any application for a certificate of public convenience and
12 necessity under RCW 80.28.190, a gas company must provide an analysis
13 of the cost of serving the expected energy requirements of customers
14 by using natural gas compared to the cost of serving the expected
15 energy requirements of customers by using electricity. The cost-
16 effectiveness analysis must be conducted using methods comparable to
17 those required by the commission for purposes of integrated resource
18 planning and must reflect the societal costs of greenhouse gas
19 emissions established in section 15 of this act. The commission may
20 not issue a certificate of public convenience and necessity unless
21 the gas company demonstrates that natural gas is cost-effective
22 relative to electricity.

23 NEW SECTION. **Sec. 15.** A new section is added to chapter 80.28
24 RCW to read as follows:

25 For the purposes of sections 12 through 14 of this act, and for
26 other purposes as the commission may prescribe, the cost of
27 greenhouse gas emissions resulting from the use of natural gas,
28 including the effect of emissions occurring in the gathering,
29 transmission, and distribution of natural gas to the end user is
30 equal to the cost per metric ton of carbon dioxide emissions, using
31 the two and one-half percent discount rate, listed in table 2,
32 Technical Support Document: Technical update of the social cost of
33 carbon for regulatory impact analysis under Executive Order 12866,
34 published by the interagency working group on social cost of
35 greenhouse gases of the United States government, August 2016. The
36 commission must adjust the costs established in this section to
37 reflect the effect of inflation.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 80.28
2 RCW to read as follows:

3 Each gas company must report to the commission each year an
4 estimate of the greenhouse gas emissions resulting from natural gas
5 and renewable natural gas delivered to its customers. The report must
6 assess each company's associated emissions relative to a
7 proportionate share of the state's greenhouse gas emissions reduction
8 goal. The commission must report to the governor every five years an
9 assessment of whether the gas companies are on track to meet a
10 proportionate share of the state's greenhouse gas emissions reduction
11 goal.

12 **Sec. 17.** RCW 19.27A.015 and 1990 c 2 s 2 are each amended to
13 read as follows:

14 Except as provided in RCW 19.27A.020(~~((+7))~~) (6), the Washington
15 state energy code for residential buildings shall be the (~~(maximum~~
16 ~~and)~~) minimum energy code for residential buildings in each city,
17 town, and county and shall be enforced by each city, town, and county
18 no later than July 1, 1991. The Washington state energy code for
19 nonresidential buildings shall be the minimum energy code for
20 nonresidential buildings enforced by each city, town, and county.

21 **Sec. 18.** RCW 19.27A.020 and 2018 c 207 s 7 are each amended to
22 read as follows:

23 (1) The state building code council in the department of
24 enterprise services shall adopt rules to be known as the Washington
25 state energy code as part of the state building code.

26 (2) The council shall follow the legislature's standards set
27 forth in this section to adopt rules to be known as the Washington
28 state energy code. The Washington state energy code shall be designed
29 to:

30 (a) Construct increasingly energy efficient homes and buildings
31 that help achieve the broader goal of building zero fossil-fuel
32 greenhouse gas emission homes and buildings by the year 2031;

33 (b) Require new buildings to meet a certain level of energy
34 efficiency, but allow flexibility in building design, construction,
35 and heating equipment efficiencies within that framework; and

36 (c) Allow space heating equipment efficiency to offset or
37 substitute for building envelope thermal performance.

1 (3) The Washington state energy code shall take into account
2 regional climatic conditions. One climate zone includes: Adams,
3 Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield,
4 Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille,
5 Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima
6 counties. The other climate zone includes all other counties not
7 listed in this subsection (3). The assignment of a county to a
8 climate zone may not be changed by adoption of a model code or rule.
9 Nothing in this section prohibits the council from adopting the same
10 rules or standards for each climate zone.

11 (4) The Washington state energy code for residential buildings
12 shall be the 2006 edition of the Washington state energy code, or as
13 amended by rule by the council.

14 (5) The minimum state energy code for new nonresidential
15 buildings shall be the Washington state energy code, 2006 edition, or
16 as amended by the council by rule.

17 (6) (a) (~~Except as provided in (b) of this subsection,~~) The
18 Washington state energy code for residential structures shall
19 (~~preempt the~~) be the minimum residential energy code of each city,
20 town, and county in the state of Washington.

21 (b) The state energy code for residential structures does not
22 preempt a city, town, or county's energy code for residential
23 structures which exceeds the requirements of the state energy code
24 and which was adopted by the city, town, or county prior to March 1,
25 1990. Such cities, towns, or counties may (~~not~~) subsequently amend
26 their energy code for residential structures to exceed the
27 requirements adopted prior to March 1, 1990, provided that such an
28 amendment conforms with the requirements of this section.

29 (c) A city, town, or county may adopt additional residential
30 energy code requirements as developed by the state building code
31 council under subsection (8) of this section.

32 (7) The state building code council shall consult with the
33 department of enterprise services as provided in RCW 34.05.310 prior
34 to publication of proposed rules. The director of the department of
35 enterprise services shall recommend to the state building code
36 council any changes necessary to conform the proposed rules to the
37 requirements of this section.

38 (8) The state building code council shall evaluate and consider
39 adoption of the international energy conservation code in Washington
40 state in place of the existing state energy code.

1 (9) (a) By December 1, 2019, the state building code council must
2 adopt the following optional efficiency appendices and include them
3 in the Washington state energy code for residential buildings:

4 (i) An optional appendix providing energy code provisions that
5 will reduce energy use by an additional eight to ten percent compared
6 to the minimum code; and

7 (ii) An optional appendix providing energy code provisions that
8 will reduce energy use by an additional sixteen to twenty percent
9 compared to the minimum code.

10 (b) The state building code council must amend the two optional
11 appendices provided under (a) of this subsection whenever it amends
12 the minimum code requirements in order to achieve the incremental
13 savings prescribed in this section.

14 (10) The definitions in RCW 19.27A.140 apply throughout this
15 section.

16 **Sec. 19.** RCW 19.27A.025 and 1991 c 122 s 3 are each amended to
17 read as follows:

18 (1) The minimum state energy code for new nonresidential
19 buildings shall be the Washington state energy code, 1986 edition, as
20 amended. The state building code council may, by rule adopted
21 pursuant to chapter 34.05 RCW, amend that code's requirements for new
22 nonresidential buildings provided that:

23 (a) Such amendments increase the energy efficiency of typical
24 newly constructed nonresidential buildings; and

25 (b) Any new measures, standards, or requirements adopted must be
26 technically feasible, commercially available, and ~~((cost-effective to~~
27 ~~building owners and tenants)) developed to yield the lowest overall~~
28 cost to the building owner and occupant while meeting the energy
29 reduction goals established under RCW 19.27A.160.

30 (2) In considering amendments to the state energy code for
31 nonresidential buildings, the state building code council shall
32 establish and consult with a technical advisory committee including
33 representatives of appropriate state agencies, local governments,
34 general contractors, building owners and managers, design
35 professionals, utilities, and other interested and affected parties.

36 (3) Decisions to amend the Washington state energy code for new
37 nonresidential buildings shall be made prior to December 15th of any
38 year and shall not take effect before the end of the regular
39 legislative session in the next year. Any disputed provisions within

1 an amendment presented to the legislature shall be approved by the
2 legislature before going into effect. A disputed provision is one
3 which was adopted by the state building code council with less than a
4 two-thirds majority vote. Substantial amendments to the code shall be
5 adopted no more frequently than every three years.

6 **Sec. 20.** RCW 19.27.540 and 2009 c 459 s 16 are each amended to
7 read as follows:

8 (1) The building code council shall adopt rules for electric
9 vehicle infrastructure requirements. Rules adopted by the state
10 building code council must consider applicable national and
11 international standards and be consistent with rules adopted under
12 RCW 19.28.281.

13 (2)(a) Except as provided in (b) of this subsection, the rules
14 adopted under this section must require electric vehicle charging
15 capability at all new buildings. Where parking is provided, the
16 greater of one parking space or ten percent of parking spaces must be
17 provided with electric vehicle charging infrastructure. Electrical
18 rooms serving parking areas must be designed to accommodate the
19 electrical equipment and distribution required to serve a minimum of
20 fifty percent of the total parking spaces with 208/240 V 40-amp
21 electric vehicle charging infrastructure. When electric vehicle
22 charging infrastructure is required, two accessible parking spaces
23 must be served by electric vehicle charging infrastructure. The
24 electric vehicle charging infrastructure may also serve adjacent
25 parking spaces not designated as accessible parking.

26 (b) For occupancies classified as assembly or mercantile, the
27 requirements of this section apply only to employee parking spaces.
28 The requirements of this section do not apply to occupancies
29 classified as residential R-3, utility, or miscellaneous.

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