
THIRD SUBSTITUTE HOUSE BILL 1257

State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Doglio, Tarleton, Lekanoff, Fitzgibbon, Dolan, Fey, Mead, Peterson, Kloba, Riccelli, Macri, Hudgins, Morris, Stanford, Appleton, Slatter, Tharinger, Jinkins, Pollet, and Goodman; by request of Governor Inslee)

READ FIRST TIME 03/21/19.

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

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

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

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

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

16 (2) "Baseline energy use intensity" means a building's weather
17 normalized energy use intensity measured the previous year to making
18 an application for an incentive under section 4 of this act.

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

21 (4) "Building tenant" means a person or entity occupying or
22 holding possession of a building or premises pursuant to a rental
23 agreement.

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

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

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

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

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

36 (10) "Electric utility" means a consumer-owned utility or an
37 investor-owned utility.

38 (11) "Eligible building owner" means: (a) The owner of a covered
39 commercial building required to comply with the standard established

1 in section 3 of this act; or (b) the owner of a multifamily
2 residential building where the floor area exceeds fifty thousand
3 gross square feet, excluding the parking garage area.

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

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

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

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

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

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

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

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

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

1 (20) "Net energy use" means the sum of metered and bulk fuel
2 energy entering the building, minus the sum of metered energy leaving
3 the building.

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

7 (22) "Savings-to-investment ratio" means the ratio of the total
8 present value savings to the total present value costs of a bundle of
9 an energy or water conservation measure estimated over the projected
10 useful life of each measure. The numerator of the ratio is the
11 present value of net savings in energy or water and nonfuel or
12 nonwater operation and maintenance costs attributable to the proposed
13 energy or water conservation measure. The denominator of the ratio is
14 the present value of the net increase in investment and replacement
15 costs less salvage value attributable to the proposed energy or water
16 conservation measure.

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

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

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

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

26 (1)(a) By November 1, 2020, the department must establish by rule
27 a state energy performance standard for covered commercial buildings.

28 (b) In developing energy performance standards, the department
29 shall seek to maximize reductions of greenhouse gas emissions from
30 the building sector. The standard must include energy use intensity
31 targets by building type and methods of conditional compliance that
32 include an energy management plan, operations and maintenance
33 program, energy efficiency audits, and investment in energy
34 efficiency measures designed to meet the targets. The department
35 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for
36 standard development. The department must update the standard by July
37 1, 2029, and every five years thereafter. Prior to the adoption or
38 update of the standard, the department must identify the sources of
39 information it relied upon, including peer-reviewed science.

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

3 (a) Must develop energy use intensity targets that are no greater
4 than the average energy use intensity for the covered commercial
5 building occupancy type with adjustments for unique energy using
6 features. The department must also develop energy use intensity
7 targets for additional property types eligible for incentives in
8 section 4 of this act. The department must consider regional and
9 local building energy utilization data, such as existing energy star
10 benchmarking data, in establishing targets for the standard. Energy
11 use intensity targets must be developed for two or more climate zones
12 and be representative of energy use in a normal weather year;

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 investment criteria must
27 require that a building owner adopt an implementation plan to meet
28 the energy intensity target or implement an optimized bundle of
29 energy efficiency measures that provides maximum energy savings
30 without resulting in a savings-to-investment ratio of less than 1.0,
31 except as exempted in (d) (ii) of this subsection. The implementation
32 plan must be based on an investment grade energy audit and a life-
33 cycle cost analysis that accounts for the period during which a
34 bundle of measures will provide savings. The building owner's cost
35 for implementing energy efficiency measures must reflect net cost,
36 excluding any costs covered by utility or government grants. The
37 implementation plan may exclude measures that do not pay for
38 themselves over the useful life of the measure and measures excluded
39 under (d) (ii) of this subsection. The implementation plan may include
40 phased implementation such that the building owner is not required to

1 replace a system or equipment before the end of the system or
2 equipment's useful life;

3 (ii) For those buildings or structures that are listed in the
4 state or national register of historic places; designated as a
5 historic property under local or state designation law or survey;
6 certified as a contributing resource with a national register listed
7 or locally designated historic district; or with an opinion or
8 certification that the property is eligible to be listed on the
9 national or state registers of historic places either individually or
10 as a contributing building to a historic district by the state
11 historic preservation officer or the keeper of the national register
12 of historic places, no individual energy efficiency requirement need
13 be met that would compromise the historical integrity of a building
14 or part of a building.

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

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

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

23 (6) The department must provide a customer support program to
24 building owners including, but not limited to, outreach and
25 informational material, periodic training, phone and email support,
26 and other technical assistance.

27 (7) The building owner of a covered commercial building must
28 report the building owner's compliance with the standard to the
29 department in accordance with the schedule established under
30 subsection (8) of this section and every five years thereafter. For
31 each reporting date, the building owner must submit documentation to
32 demonstrate that:

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

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

1 (c) The covered commercial building is exempt from the standard
2 by demonstrating that the building meets one of the following
3 criteria:

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

8 (ii) The building did not have an average physical occupancy of
9 at least fifty percent throughout the calendar year prior to the
10 building owner compliance schedule established under subsection (8)
11 of this section;

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

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

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

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

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

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

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

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

3 (9) The department may issue a notice of violation to a building
4 owner for noncompliance with the requirements of this section. A
5 determination of noncompliance may be made for any of the following
6 reasons:

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

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

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

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

14 (10) The department is authorized to impose an administrative
15 penalty upon a building owner for failing to submit documentation
16 demonstrating compliance with the requirements of this section. The
17 penalty may not exceed an amount equal to five thousand dollars plus
18 an amount based on the duration of any continuing violation. The
19 additional amount for a continuing violation may not exceed a daily
20 amount equal to one dollar per year per gross square foot of floor
21 area. The department may by rule increase the maximum penalty rates
22 to adjust for the effects of inflation.

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

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

28 (a) Rules necessary to ensure timely, accurate, and complete
29 reporting of building energy performance for all covered commercial
30 buildings;

31 (b) Rules necessary to enforce the standard established under
32 this section; and

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

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

38 (14) By January 15, 2022, and each year thereafter through 2029,
39 the department must submit a report to the governor and the
40 appropriate committees of the legislature on the implementation of

1 the state energy performance standard established under this section.
2 The report must include information regarding the adoption of the
3 ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial
4 impact to building owners required to comply with the standard, the
5 amount of incentives provided under sections 4 and 5 of this act, and
6 any other significant information associated with the implementation
7 of this section.

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

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

13 (2) The department must adopt application and reporting
14 requirements for the incentive program. Building energy reporting for
15 the incentive program must be consistent with the energy reporting
16 requirements established under section 3 of this act.

17 (3) Upon receiving documentation demonstrating that a building
18 owner qualifies for an incentive under this section, the department
19 must authorize each applicable entity administering incentive
20 payments, as provided in section 6 of this act, to make an incentive
21 payment to the building owner. When a building is served by more than
22 one entity offering incentives or more than one type of fuel,
23 incentive payments must be proportional to the energy use intensity
24 reduction of each specific fuel provided by each entity.

25 (4) An eligible building owner may receive an incentive payment
26 in the amounts specified in subsection (6) of this section only if
27 the following requirements are met:

28 (a) The building is either: (i) A covered commercial building
29 subject to the requirements of the standard established under section
30 3 of this act; or (ii) a multifamily residential building where the
31 floor area exceeds fifty thousand gross square feet, excluding the
32 parking garage area;

33 (b) The building's baseline energy use intensity exceeds its
34 applicable energy use intensity target by at least fifteen energy use
35 intensity units;

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

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

3 (5) (a) An eligible building owner who meets the requirements of
4 subsection (4) of this section may submit an application to the
5 department for an incentive payment in a form and manner prescribed
6 by the department. The application must be submitted in accordance
7 with the following schedule:

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

10 (ii) For a building with more than ninety thousand gross square
11 feet but less than two hundred twenty thousand and one gross square
12 feet, beginning July 1, 2021, through June 1, 2026; and

13 (iii) For a building with more than fifty thousand gross square
14 feet but less than ninety thousand and one gross square feet,
15 beginning July 1, 2021, through June 1, 2027.

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

23 (6) An eligible building owner that demonstrates early compliance
24 with the applicable energy use intensity target under the standard
25 established under section 3 of this act may receive a base incentive
26 payment of eighty-five cents per gross square foot of floor area,
27 excluding parking, unconditioned, or semiconditioned spaces.

28 (7) The incentives provided in subsection (6) of this section are
29 subject to the limitations and requirements of this section,
30 including any rules or procedures implementing this section.

31 (8) The department must establish requirements for the
32 verification of energy consumption by the building owner and each
33 participating electric utility, gas company, and thermal energy
34 company.

35 (9) The department must provide an administrative process for an
36 eligible building owner to appeal a determination of an incentive
37 eligibility or amount.

38 (10) By September 30, 2025, and every two years thereafter, the
39 department must report to the appropriate committees of the
40 legislature on the results of the incentive program under this

1 section and may provide recommendations to improve the effectiveness
2 of the program.

3 (11) The department may adopt rules to implement this section.

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

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

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

12 (1)(a) Each qualifying utility must administer incentive payments
13 for the state energy performance standard early adoption incentive
14 program established in section 4 of this act on behalf of its
15 customers who are eligible building owners of covered commercial
16 buildings or multifamily residential buildings, consistent with the
17 requirements of this section. Any thermal energy company, electric
18 utility, or gas company not otherwise required to administer
19 incentive payments may voluntarily participate by providing notice to
20 the department in a form and manner prescribed by the department.

21 (b) Nothing in this subsection (1) requires a qualifying utility
22 to administer incentive payments for the state energy performance
23 standard early adoption incentive program established in section 4 of
24 this act for which the qualifying utility is not allowed a credit
25 against taxes due under this chapter.

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

30 (3) Upon receiving notification from the department that a
31 building owner has qualified for an incentive payment, each entity
32 that administers incentive payments under this section must make
33 incentive payments to its customers who are eligible building owners
34 of covered commercial buildings or multifamily residential buildings
35 who qualify as provided under this section and at rates specified in
36 section 4(6) of this act. When a building is served by more than one
37 entity administering incentive payments, incentive payments must be

1 proportional to the energy use intensity reduction of the
2 participating entities' fuel.

3 (4) The participation by an entity in the administration of
4 incentive payments under this section does not relieve the entity of
5 any obligation that may otherwise exist or be established to provide
6 customer energy efficiency programs or incentives.

7 (5) An entity that administers the payments for the incentive
8 program under this section is not liable for excess payments made in
9 reliance on amounts reported by the department as due and payable as
10 provided under section 4 of this act, if such amounts are later found
11 to be abnormal or inaccurate due to no fault of the business.

12 NEW SECTION. **Sec. 7.** This section is the tax preference
13 performance statement for the tax preference contained in section 8,
14 chapter . . . , Laws of 2019 (section 8 of this act). This performance
15 statement is only intended to be used for subsequent evaluation of
16 the tax preference. It is not intended to create a private right of
17 action by any party or be used to determine eligibility for
18 preferential tax treatment.

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

22 (2) It is the legislature's specific public policy objective to
23 increase energy efficiency and the use of renewable fuels that reduce
24 the amount of greenhouse gas emissions in Washington. It is the
25 legislature's intent to provide a credit against the taxes owing by
26 utilities under chapter 82.16 RCW for the incentives provided for the
27 implementation by eligible building owners of energy efficiency and
28 renewable energy measures.

29 (3) If a review finds that measurable energy savings have
30 increased in covered commercial buildings for which building owners
31 are receiving an incentive payment from a qualifying utility, then
32 the legislature intends to extend the expiration date of the tax
33 preference.

34 (4) In order to obtain the data necessary to perform the review
35 in subsection (3) of this section, the joint legislative audit and
36 review committee may refer to the number of building owners receiving
37 an incentive payment from qualifying utilities taking the public
38 utility tax preference under section 8 of this act, the amount of the
39 incentive payment, and the energy use intensity reduction of the

1 buildings as a result of the incentive program, as reported by the
2 department of commerce.

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

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

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

10 (b) Documented administrative cost not to exceed eight percent of
11 the incentive payments.

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

14 (3) Credit must be claimed against taxes due under this chapter
15 for the incentive payments made and administrative expenses incurred.
16 Credit earned in one calendar year may not be carried backward but
17 may be claimed against taxes due under this chapter during the same
18 calendar year and for the following two calendar years. The credit
19 may not exceed the tax that would otherwise be due under this
20 chapter. Refunds may not be granted in the place of a credit.

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

25 (b) The department must assess interest on the taxes due under
26 this subsection. Interest must be assessed at the rate provided for
27 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
28 date the credit was claimed, and accrues until the taxes against
29 which the credit was claimed are repaid. The department must provide
30 written notice of the amount due under this subsection and that the
31 amount due must be paid within thirty days of the date of the notice.
32 The department may not impose penalties as provided in chapter 82.32
33 RCW on taxes due under this subsection unless the amount due is not
34 paid in full by the due date in the notice.

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

1 (5) The amount of credit taken under this section and the
2 identity of a business that takes the credit is not confidential
3 taxpayer information under RCW 82.32.330 and is subject to
4 disclosure.

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

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

8 The definitions in this section apply to RCW 19.27A.130 through
9 19.27A.190 and 19.27A.020 unless the context clearly requires
10 otherwise.

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

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

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

24 (4) "Cost-effectiveness" means that a project or resource is
25 forecast:

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

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

32 (5) "Council" means the state building code council.

33 (6) "Embodied energy" means the total amount of fossil fuel
34 energy consumed to extract raw materials and to manufacture,
35 assemble, transport, and install the materials in a building and the
36 life-cycle cost benefits including the recyclability and energy
37 efficiencies with respect to building materials, taking into account
38 the total sum of current values for the costs of investment, capital,

1 installation, operating, maintenance, and replacement as estimated
2 for the lifetime of the product or project.

3 (7) "Energy consumption data" means the monthly amount of energy
4 consumed by a customer as recorded by the applicable energy meter for
5 the most recent twelve-month period.

6 (8) "Energy service company" has the same meaning as in RCW
7 43.19.670.

8 (9) "Enterprise services" means the department of enterprise
9 services.

10 (10) "Greenhouse gas" and "greenhouse gases" includes carbon
11 dioxide, methane, nitrous oxide, hydrofluorocarbons,
12 perfluorocarbons, and sulfur hexafluoride.

13 (11) "Investment grade energy audit" means an intensive
14 engineering analysis of energy efficiency and management measures for
15 the facility, net energy savings, and a cost-effectiveness
16 determination.

17 (12) "Investor-owned utility" means a corporation owned by
18 investors that meets the definition of "corporation" as defined in
19 RCW 80.04.010 and is engaged in distributing either electricity or
20 natural gas, or both, to more than one retail electric customer in
21 the state.

22 (13) "Major facility" means any publicly owned or leased
23 building, or a group of such buildings at a single site, having ten
24 thousand square feet or more of conditioned floor space.

25 (14) "National energy performance rating" means the score
26 provided by the energy star program, to indicate the energy
27 efficiency performance of the building compared to similar buildings
28 in that climate as defined in the United States environmental
29 protection agency "ENERGY STAR® Performance Ratings Technical
30 Methodology."

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

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

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

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

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

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

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

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

12 (c) A wastewater treatment facility owned by a qualifying public
13 agency; or

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

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

18 (22) "Building owner" has the same meaning as defined in section
19 2 of this act.

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

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

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

30 (2) On and after January 1, 2010, upon the written authorization
31 or secure electronic authorization of a nonresidential building owner
32 or operator, a qualifying utility shall upload the energy consumption
33 data for the accounts specified by the owner or operator for a
34 building to the United States environmental protection agency's
35 energy star portfolio manager in a form that does not disclose
36 personally identifying information.

37 (3) In carrying out the requirements of this section, a
38 qualifying utility shall use any method for providing the specified
39 data in order to maximize efficiency and minimize overall program

1 cost. Qualifying utilities are encouraged to consult with the United
2 States environmental protection agency and their customers in
3 developing reasonable reporting options.

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

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

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

11 (5) Based on the size guidelines in subsection (4) of this
12 section, a building owner or operator, or their agent, of a
13 nonresidential building shall disclose the United States
14 environmental protection agency's energy star portfolio manager
15 benchmarking data and ratings to a prospective buyer, lessee, or
16 lender for the most recent continuously occupied twelve-month period.
17 A building owner or operator, or their agent, who delivers United
18 States environmental protection agency's energy star portfolio
19 manager benchmarking data and ratings to a prospective buyer, lessee,
20 or lender is not required to provide additional information regarding
21 energy consumption, and the information is deemed to be adequate to
22 inform the prospective buyer, lessee, or lender regarding the United
23 States environmental protection agency's energy star portfolio
24 manager benchmarking data and ratings for the most recent twelve-
25 month period for the building that is being sold, leased, financed,
26 or refinanced.

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

32 (7) An electric or gas utility that is not a qualifying utility
33 must either offer the upload service specified in subsection (2) of
34 this section or provide customers who are building owners of covered
35 commercial buildings with consumption data in an electronic document
36 formatted for direct upload to the United States environmental
37 protection agency's energy star portfolio manager. Within sixty days
38 of receiving a written or electronic request and authorization of a
39 building owner, the utility must provide the building owner with

1 monthly energy consumption data as required to benchmark the
2 specified building.

3 (8) For any covered commercial building with three or more
4 tenants, an electric or gas utility must, upon request of the
5 building owner, provide the building owner with aggregated monthly
6 energy consumption data without requiring prior consent from tenants.

7 (9) Each electric or gas utility must ensure that all data
8 provided in compliance with this section does not contain personally
9 identifiable information or customer-specific billing information
10 about tenants of a covered commercial building.

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

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

24 NEW SECTION. Sec. 12. (1) The legislature finds and declares
25 that:

26 (a) Renewable natural gas provides benefits to natural gas
27 utility customers and to the public; and

28 (b) The development of renewable natural gas resources should be
29 encouraged to support a smooth transition to a low carbon energy
30 economy in Washington.

31 (2) It is the policy of the state to provide clear and reliable
32 guidelines for gas companies that opt to supply renewable natural gas
33 resources to serve their customers and that ensure robust ratepayer
34 protections.

35 NEW SECTION. Sec. 13. A new section is added to chapter 80.28
36 RCW to read as follows:

1 (1) A natural gas company may propose a renewable natural gas
2 program under which the company would supply renewable natural gas
3 for a portion of the natural gas sold or delivered to its retail
4 customers. The renewable natural gas program is subject to review and
5 approval by the commission. The customer charge for a renewable
6 natural gas program may not exceed five percent of the amount charged
7 to retail customers for natural gas.

8 (2) The environmental attributes of renewable natural gas
9 provided under this section must be retired using procedures
10 established by the commission and may not be used for any other
11 purpose. The commission must approve procedures for banking and
12 transfer of environmental attributes.

13 (3) As used in this section, "renewable natural gas" includes
14 renewable natural gas as defined in RCW 54.04.190. The commission may
15 approve inclusion of other sources of gas if those sources are
16 produced without consumption of fossil fuels.

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

19 (1) Each gas company must offer by tariff a voluntary renewable
20 natural gas service available to all customers to replace any portion
21 of the natural gas that would otherwise be provided by the gas
22 company. The voluntary renewable natural gas service must include
23 delivery to the customer of all environmental attributes associated
24 with the renewable natural gas.

25 (2) For the purposes of this section, "renewable natural gas"
26 includes renewable natural gas as defined in RCW 54.04.190. The
27 commission may approve inclusion of other sources of gas if those
28 sources are produced without consumption of fossil fuels.

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

31 For the purposes of section 11 of this act, the cost of
32 greenhouse gas emissions resulting from the use of natural gas,
33 including the effect of emissions occurring in the gathering,
34 transmission, and distribution of natural gas to the end user is
35 equal to the cost per metric ton of carbon dioxide emissions, using
36 the two and one-half percent discount rate, listed in table 2,
37 Technical Support Document: Technical update of the social cost of
38 carbon for regulatory impact analysis under Executive Order 12866,

1 published by the interagency working group on social cost of
2 greenhouse gases of the United States government, August 2016. The
3 commission must adjust the costs established in this section to
4 reflect the effect of inflation.

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

7 The commission must monitor the greenhouse gas emissions
8 resulting from natural gas and renewable natural gas delivered by
9 each gas company to its customers, relative to a proportionate share
10 of the state's greenhouse gas emissions reduction goal. The
11 commission must report to the governor by January 1, 2020, and every
12 three years thereafter, an assessment of whether the gas companies
13 are on track to meet a proportionate share of the state's greenhouse
14 gas emissions reduction goal. The commission may rely on reports
15 submitted by gas companies to the United States environmental
16 protection agency or other governmental agencies in complying with
17 this section.

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

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

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

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

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

1 (3) Decisions to amend the Washington state energy code for new
2 nonresidential buildings shall be made prior to December 15th of any
3 year and shall not take effect before the end of the regular
4 legislative session in the next year. Any disputed provisions within
5 an amendment presented to the legislature shall be approved by the
6 legislature before going into effect. A disputed provision is one
7 which was adopted by the state building code council with less than a
8 two-thirds majority vote. Substantial amendments to the code shall be
9 adopted no more frequently than every three years.

10 **Sec. 18.** RCW 19.27.540 and 2009 c 459 s 16 are each amended to
11 read as follows:

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

17 (2)(a) Except as provided in (b) of this subsection, the rules
18 adopted under this section must require electric vehicle charging
19 capability at all new buildings that provide on-site parking. Where
20 parking is provided, the greater of one parking space or ten percent
21 of parking spaces, rounded to the next whole number, must be provided
22 with wiring or raceway sized to accommodate 208/240 V 40-amp or
23 equivalent electric vehicle charging. Electrical rooms serving
24 buildings with on-site parking must be sized to accommodate the
25 potential for electrical equipment and distribution required to serve
26 a minimum of fifty percent of the total parking spaces with 208/240 V
27 40-amp or equivalent electric vehicle charging. Load management
28 infrastructure may be used to adjust the size and capacity of the
29 required building electric service equipment and circuits on the
30 customer facilities, as well as electric utility owned
31 infrastructure, as allowed by applicable local and national
32 electrical code. For accessible parking spaces, the greater of one
33 parking space or ten percent of accessible parking spaces, rounded to
34 the next whole number, must be provided with electric vehicle
35 charging infrastructure that may also serve adjacent parking spaces
36 not designated as accessible parking.

37 (b) For occupancies classified as assembly or mercantile, the
38 requirements of this section apply only to employee parking spaces.

1 The requirements of this section do not apply to occupancies
2 classified as residential R-3, utility, or miscellaneous.

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