H-0935.2

HOUSE BILL 1747

State of Washington 61st Legislature 2009 Regular Session

By Representatives Rolfes, Chase, Upthegrove, Hasegawa, Eddy, Liias, Ormsby, Pedersen, Dunshee, McCoy, Morris, Carlyle, Dickerson, Hudgins, Moeller, Sells, Kenney, White, and Nelson

Read first time 01/28/09. Referred to Committee on Technology, Energy & Communications.

AN ACT Relating to reducing climate pollution in the built environment; amending RCW 19.27A.020, 35.92.360, 54.16.280, 36.94.460, 70.164.020, 70.164.040, 70.164.050, and 70.164.060; adding a new section to chapter 35.92 RCW; adding new sections to chapter 19.27A RCW; and creating a new section.

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

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

(1) Buildings have a lifespan of fifty to one hundred years during which they continually consume energy and produce carbon dioxide emissions. Existing homes, commercial buildings, and public institutions consume seventy percent of the electricity load in Washington state and account for more than thirty percent of the state's carbon dioxide emissions. Those emissions need to decline in order to meet our state's climate pollution reduction requirements in RCW 70.235.020.

(2) Energy use in buildings is responsible for more than thirty percent of Washington's global-warming emissions. Existing buildings are far and away the region's greatest energy wasters, and thus our greatest savings opportunity.

(3) State government can lead Washington into the clean energy economy by making public buildings models of energy efficiency, while saving public dollars.

(4) Energy efficiency is the cheapest and fastest way to meet Washington's growing demand for electricity. A kilowatt saved is a kilowatt earned. Put another way, saving a kilowatt-hour through efficiency improvements frees up a kilowatt-hour to be used to meet our growing demand for electricity. Energy efficiency typically costs about three cents per kilowatt-hour saved compared with seven to twelve cents per kilowatt-hour for electricity generated by new power plants.

(5) The United States population and economy are projected to grow significantly over the coming decades, increasing the desire for new buildings to meet this demand, with approximately fifteen million new buildings projected to be constructed by 2015 nationwide.

(6) Making Washington homes and businesses more energy efficient reduces the load on our electricity grid, the energy interstate we all depend on and pay for. Washington's energy needs will grow along with predicted population growth. Everyone who pays an electricity bill broadly shares the cost of new power plants and power lines. Energy efficiency can defer and even replace the need for expensive new energy infrastructure helping to keep everyone's energy costs down and to meet projected energy demand growth.

(7) Energy efficiency investments also create good local jobs, so when utilities, businesses, or families invest in energy efficiency, they are investing in the local community and the regional economy.

(8) The Washington state energy code is updated every three years and reductions in energy use can be achieved by strengthening building codes for new buildings and major retrofits.

(9) Funding for the state building code, responsible for developing, evaluating, monitoring, and adopting fire, safety, public health, and energy codes, is limited to building permit fees of four dollars and fifty cents per permit collected by local governments. The building permit fee has not changed in twenty-seven years.

(10) Facilitating a benchmarking system that provides energy performance information for existing commercial and public buildings in the state would enable building owners and operators to better manage energy use and costs associated with those buildings.

(11) Up-front financing for energy efficiency improvements can be a barrier to investments in energy efficiency upgrades and needs to be addressed to rapidly increase energy efficiency, to reduce energy use, and to meet our state's climate goals.

(12) Low-income households pay a higher percentage of their income on energy bills than other households. Policies and programs should focus on increasing home weatherization and energy-conserving services to reduce energy bills.

(13) According to the American council for an energy-efficient economy, improving buildings' energy efficiency by twenty percent by 2030 could create an estimated eight hundred thousand net jobs nationwide, and by thirty percent could create up to one million three hundred thousand net jobs.

NEW SECTION. **Sec. 2.** The definitions in this section apply to sections 1 through 3 and 5 through 8 of this act and RCW 19.27A.020 unless the context clearly requires otherwise.

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

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

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

(4) "Cost-effectiveness" means energy conservation measures that the investment grade audit concludes will generate savings sufficient to finance a portfolio of energy savings projects for not more than ten years.

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

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

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

(8) "General administration" means the department of general administration.

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

(10) "Investment grade energy audit" means an intensive engineering analysis of energy conservation and management measures for the facility, net energy savings, and a cost-effectiveness determination.

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

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

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

(14) "Net zero energy use" means a building with net energy consumption of zero over a typical year as measured at utility. This is done in part by maximizing energy efficiency.

(15) "Portfolio manager" means the United States environmental protection agency's energy star portfolio manager or an equivalent tool adopted by the department.

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

(17) "Qualifying public agency" includes all state agencies, colleges, universities, and school districts.

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

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

(a) A building or structure, or a group of buildings or structures

at a single site, owned by a qualifying public agency, that exceed ten thousand square feet of conditioned space;

(b) Buildings, structures, or spaces leased by a qualifying public agency that exceeds ten thousand square feet of conditioned space, where the qualifying public agency purchases energy directly from the energy provider;

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

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

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

NEW SECTION. **Sec. 3.** (1) The department shall develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. Primarily, the strategic plan must be used to direct the future code increases in RCW 19.27A.020, with targets for new buildings similar to the architecture 2030 challenge schedule. The strategic plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in updated energy codes and through complementary policies.

(2) The department must complete and release the strategic plan to the legislature and the council by December 31, 2010, and update the plan every three years.

(3) The strategic plan must include recommendations to the council on energy code upgrades. At a minimum, the strategic plan must:

(a) Consider development of aspirational codes separate from the state energy code that contain economically and technically feasible optional standards that could achieve higher energy efficiency for those builders that elected to follow the optional standards in lieu of or in addition to complying with the standards set forth in the state energy code;

(b) Determine the appropriate methodology to measure achievement of state energy code targets using the United States environmental protection agency's target finder program or equivalent methodology;

(c) Address the need for enhanced code enforcement;

(d) Include state strategies to support research, demonstration, and education programs designed to achieve the targets in section 5 of this act and enhance energy efficiency and on-site renewable energy production in buildings;

(e) Develop incentives, education, training programs and certifications, particularly state-approved training or certification programs, joint apprenticeship programs, or labor-management partnership programs that train workers for energy-efficiency projects to ensure proposed programs are designed to increase building professionals' ability to design, construct, and operate buildings that meet the energy efficiency targets in section 5 of this act;

(f) Address barriers for utilities to serve net zero energy homes and buildings and policies to overcome those barriers;

(g) Address the limits of a prescriptive code in achieving net zero energy use homes and buildings and propose a transition to performance-based codes;

(h) Create tax incentives, rebates, innovative or discounted financing, and nonfinancial support in motivating energy consumers to take action to increase energy efficiency and their use of on-site renewable energy. Such incentives, rebates, or financing options may consider the role of government programs as well as utility-sponsored programs;

(i) Address the adequacy of education and technical assistance, including school curricula, technical training, and peer-to-peer exchanges for professional and trade audiences;

(j) Develop strategies to develop and install district and neighborhood-wide energy systems that help meet net zero energy use in homes and buildings; and

(k) Address barriers to one hundred percent carbon free energy consumption in all buildings.

(4) The department and the council shall convene a work group to inform the initial development of the strategic plan. Membership of the work group may include, but is not limited to, representatives from:

(a) A municipal code enforcement officer employed by a municipality;

(b) A residential builder;

(c) A commercial builder;

(d) An architect licensed in the state who is accredited by a nationally recognized organization that administers credentialing programs related to environmentally sound building practices and standards, recommended by the American institute of architects Washington chapter;

(e) A professional engineer licensed in Washington state, recommended by a statewide association of structural engineers;

(f) A historic preservation representative, recommended by the Washington historic preservation commission, with experience implementing the state's standards for the treatment of historic properties;

(g) A conservation group working in energy efficiency;

(h) The Northwest power planning and conservation council;

(i) An investor-owned utility providing electricity service;

(j) An investor-owned utility providing natural gas service;

(k) A public utility district;

(l) A municipal electric utility;

(m) An electric cooperative;

(n) A representative of the energy services companies industry;

(o) A representative from the legal profession;

(p) A representative from a financial institution or entity familiar with municipal bonds;

(q) An electrical engineer licensed in Washington state, recommended by a statewide association of electrical engineers;

(r) A consulting design firm working on building renewable energy solutions;

(s) A representative from a labor union representing workers in energy or building and construction industries or labor affiliates administering state-approved, joint apprenticeship programs or labor-management partnership programs that train workers for these industries;

(t) A representative of an equipment manufacturer; and

(u) A mechanical HVAC engineer licensed in Washington state, recommended by a statewide association of mechanical HVAC engineers.

Sec. 4. RCW 19.27A.020 and 1998 c 245 s 8 are each amended to read as follows:

(1) ((~~No later than January 1, 1991,~~)) The state building code council shall adopt rules to be known as the Washington state energy code as part of the state building code.

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

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

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework((~~. The Washington state energy code shall be designed to~~)); and

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

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall ((~~require:~~

~~(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:~~

~~(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);~~

~~(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining~~

~~equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;~~

~~(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);~~

~~(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);~~

~~(v) Slab on grade floors insulated to a level of R-10 at the perimeter;~~

~~(vi) Double glazed windows with values not more than U-0.4;~~

~~(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and~~

~~(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.~~

~~(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:~~

~~(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);~~

~~(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;~~

~~(iii) Below grade walls, insulated on the interior side, to a level~~

~~of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);~~

~~(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);~~

~~(v) Slab on grade floors insulated to a level of R-10 at the perimeter;~~

~~(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;~~

~~(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the department of community, trade, and economic development, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and~~

~~(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.~~

~~(c) The requirements of (b)(ii) of this subsection do not apply to residences with log or solid timber walls with a minimum average thickness of three and one-half inches and with space heat other than electric resistance.~~

~~(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.~~

~~(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. U-values for vertical glazing shall be determined, certified, and labeled in accordance with the appropriate national fenestration rating council (NFRC) standard, as determined and adopted by the state building code council. Certification of U-values shall be conducted by a certified, independent agency licensed by the NFRC. The state building code council may develop and adopt alternative methods of determining, certifying, and labeling U-values for vertical glazing that may be used~~

~~by fenestration manufacturers if determined to be appropriate by the council. The state building code council shall review and consider the adoption of the NFRC standards for determining, certifying, and labeling U-values for doors and skylights when developed and published by the NFRC. The state building code council may develop and adopt appropriate alternative methods for determining, certifying, and labeling U-values for doors and skylights. U-values for doors and skylights determined, certified, and labeled in accordance with the appropriate NFRC standard shall be acceptable for compliance with the state energy code. Sealed insulation glass, where used, shall conform to, or be in the process of being tested for, ASTM E-774-81 class A or better~~)) be the 2006 edition of the Washington state energy code, as amended by rule by the council.

((~~(6)~~)) (5) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, ((~~1986~~)) 2006 edition, as amended by the council by rule.

((~~(7)~~)) (6)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

((~~(8)~~)) (7) The state building code council shall consult with the department of community, trade, and economic development as provided in RCW 34.05.310 prior to publication of proposed rules. ((~~The department of community, trade, and economic development shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section.~~)) The director of the department of community, trade, and economic development shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(8) The definitions in section 2 of this act apply throughout this section.

NEW SECTION. **Sec. 5.** (1) The council shall adopt state energy codes that require homes and buildings constructed from 2016 through 2031 to meet the following energy efficiency targets, using the adopted 2006 Washington state energy code as a baseline:

(a) By 2013, new homes and buildings must be designed and constructed to achieve a forty percent reduction in energy use for that building type;

(b) By 2016, new homes and buildings must be designed and constructed to achieve a forty-five percent reduction in energy use for that building type;

(c) By 2019, new homes and buildings must be designed and constructed to achieve a fifty percent reduction in energy use for that building type;

(d) By 2022, new homes and buildings must be designed and constructed to achieve a fifty-five percent reduction in energy use for that building type;

(e) By 2025, new homes and buildings must be designed and constructed to achieve a sixty percent reduction in energy use for that building type;

(f) By 2028, new homes and buildings must be designed and constructed to achieve a sixty-five percent reduction in energy use for that building type; and

(g) By 2031, new homes and buildings must be designed and constructed to achieve a seventy percent reduction in energy use for that building type.

(2) If the council determines that economic, technological, or process factors would significantly impede adoption of or compliance with state energy codes incorporating the energy efficiency targets in subsection (1) of this section, the council shall report its findings to the legislature by December 31st of the year prior to the year in which those codes would otherwise be enacted under its proposed action plan.

NEW SECTION. **Sec. 6.** (1) On and after January 1, 2010, qualifying utilities shall maintain records of the energy consumption data of all nonresidential and qualifying public agency buildings to which they provide service. This data must be maintained for at least the most

recent twelve months in a format compatible for uploading to the portfolio manager.

(2) On and after January 1, 2010, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, a qualifying utility shall upload all of the energy consumption data for the accounts specified for a building to the portfolio manager in a manner that preserves the confidentiality of the customers.

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

(4) Disclosure of nonpublic nonresidential building performance data will be phased in as follows:

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

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

(5) Based on the size guidelines in subsection (4) of this section, a property owner or operator, or their agent, of a nonresidential building shall complete and disclose the portfolio manager data and ratings for the most recent continuously occupied twelve-month period to a prospective buyer, lessee, or lender. If the data is delivered to a prospective buyer, lessee, or lender, a property owner, operator, or their agent is not required to provide additional information regarding energy consumption, and the information is deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the portfolio manager data and ratings for the most recent twelve-month period for the building that is being sold, leased, financed, or refinanced.

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

NEW SECTION. **Sec. 7.** By December 31, 2009, the department shall recommend to the legislature a methodology to determine an energy performance score for residential buildings and an implementation strategy to ensure disclosure of that score at the time of sale.

NEW SECTION. **Sec. 8.** (1) By July 1, 2010, each qualifying public agency shall:

(a) Create an energy benchmark for each reporting public facility using a portfolio manager;

(b) Report the environmental protection agency national energy performance rating for each reporting public facility included in the technical requirements for this rating; and

(c) Link all portfolio manager accounts to the state portfolio manager master account to facilitate public reporting.

(2) By January 1, 2010, general administration shall establish a state portfolio manager master account. The account must be designed to provide shared reporting for all reporting public facilities.

(3) By July 1, 2010, general administration shall select a standardized portfolio manager report for reporting public facilities. General administration, in collaboration with the United States environmental protection agency, shall make the standard report of each reporting public facility available to the public through the portfolio manager web site.

(4) General administration shall prepare a biennial report summarizing the statewide portfolio manager master account reporting data. The first report must be completed by December 1, 2012. Subsequent reporting shall be completed every two years thereafter.

(5) By July 1, 2010, general administration shall develop a technical assistance program to facilitate the implementation of a preliminary audit and the investment grade energy audit. General administration shall design the technical assistance program to utilize no-cost audit services provided by utilities or energy services contracting companies when possible.

(6) For each reporting public facility with a national energy performance rating score below fifty, the qualifying public agency, in consultation with general administration, shall undertake a preliminary energy audit by July 1, 2011. If potential cost-effective energy savings are identified, an investment grade energy audit must be

completed by July 1, 2012. Implementation of cost-effective energy conservation measures are required by July 1, 2015. For a major facility that is leased by a state agency, college, university, or school district, energy audits and implementation of cost-effective energy conservation measures are required only for that portion of the facility that is leased by the state agency, college, university, or school district.

(7) The state may not renew leases with buildings that have a portfolio manager score below fifty.

(8) By July 1, 2011, general administration shall conduct a review of facilities not covered by the national energy performance rating. Based on this review, general administration shall develop a portfolio of additional facilities that require preliminary energy audits. For these facilities, the qualifying public agency, in consultation with general administration, shall undertake a preliminary energy audit by July 1, 2012. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013.

NEW SECTION. **Sec. 9.** A new section is added to chapter 35.92 RCW to read as follows:

(1) A municipality may construct, purchase, acquire, add to, extend, maintain, and operate a system of conservation facilities, equipment, and programs for the conservation of energy, within or without its limits, for the purpose of providing to its inhabitants and other persons, services that lead to the more efficient consumption of energy resources, from whatever source generated, with full power to regulate and control the use, distribution, and price of such efficiency measures, and to enter into agreements for the maintenance and operation of conservation facilities under terms and conditions determined by the legislative authority of the municipality. A conservation utility may be operated as a separate utility or may be combined with an existing electric, water, wastewater, solid waste, heating or other utility operated by the municipality.

(2) For the purposes of meeting the state's goals relating to greenhouse gas emissions in RCW 70.235.020 and reducing the state's dependence on foreign oil, the provision of conservation services and the establishment and operation of conservation utilities by a

municipality under this section are declared to be a public use and a public and municipal purpose. A municipality that forms a conservation utility under this section is declared to be engaged in the sale or distribution of energy services for purposes of Article VIII, section 10 of the state Constitution, and is authorized to operate the loan programs authorized in RCW 35.92.360 or 54.16.280, as applicable.

(3)(a) The legislative authority of the municipality has full authority to control the use, distribution, and rates or charges for energy conservation services and facilities provided to customers of the system if the rates charged are uniform for the same class of customer or service.

(b) In classifying customers served or service furnished, the legislative authority may consider:

(i) The difference in cost of service to the various customers;

(ii) The location of the various customers within or without the municipality;

(iii) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(iv) The different character of the service furnished various customers;

(v) The quantity and quality of the conservation services furnished; and

(vi) Any other matters that present a reasonable difference as a ground for distinction.

(4) The legislative authority of the municipality has full authority to regulate and control the conservation services delivered, together with the right to handle and sell or lease any meters, lamps, motors, transformers, and conservation equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof.

(5) The associated reductions in greenhouse gas emissions from any energy conservation services and facilities provided by the conservation utility are owned by the conservation utility unless otherwise expressly provided in the rates and charges or contracts for energy conservation.

(6) The associated reductions in greenhouse gas emissions from any energy conservation services and facilities provided by the conservation utility may be sold by the conservation utility to:

(a) Cities, counties, and public utility districts to mitigate the greenhouse gas emissions of those jurisdictions pursuant to the authority to purchase offsets provided in RCW 35.92.430, 36.01.250, and 54.16.390; or

(b) Electric utilities as renewable energy credits under chapter 19.285 RCW to the extent that the reductions in greenhouse gas emissions result from a reduction in electric energy usage.

(7) This authority is in addition to any authority granted in other law and does not limit the ability to provide conservation services through an existing electric, water, wastewater, or heating utility. The election procedures under RCW 35.92.070 and 54.08.070 and chapter 80.52 RCW or other law have no application to the formation of a conservation utility formed under this section. Nothing in this section authorizes any municipality to generate, transmit, distribute, or sell electricity. Nothing in this section may be construed to restrain or limit the authority of any individual, partnership, corporation, or private utility from establishing and providing conservation services.

(8) For purposes of this section, "municipality" means any city, town, county, or public utility district.

Sec. 10. RCW 35.92.360 and 2002 c 276 s 2 are each amended to read as follows:

(1) Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another.

(2) For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a municipal electric utility's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier.

(3) Except where otherwise authorized, such assistance shall be limited to:

((~~(1)~~)) (a) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

((~~(2)~~)) (b) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards((~~.~~));

((~~(3)~~)) (c) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

((~~(4)~~)) (d) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

((~~(5)~~)) (4) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. The city or town may make assistance available in the form of

grants made under this section for conservation improvements to existing structures owned or occupied by persons qualifying as poor or infirm consistent with the state Constitution.

(5) The legislative authority of the city or town shall approve the aggregate amount of such loans and repayment terms by ordinance and may, by ordinance, delegate to staff to approve individual loans consistent with the terms set forth in the ordinance. The city or town and the property owner shall enter into a loan agreement setting forth the terms of the loan, which agreement may provide for acceleration in the event a loan installment is delinquent. In order to secure loans, the city or town must have a statutory lien on the property on which conservation improvements so financed are installed or constructed. The lien is paramount and superior to any other lien or encumbrance theretofore or thereafter created, except a lien for general taxes and special assessment district assessments. The loan is a lien upon property from the time the loan agreement is executed. If the legislative authority of the city or town has acted in good faith and without fraud in granting a loan, the loan is valid and enforceable as such and the lien upon the property is valid.

(6) The city or town may foreclose a lien in an action in the superior court. All or any of the tracts subject to such a lien may be proceeded against in a single action, and all parties appearing of record as owning or claiming to own or having an interest in or lien upon the tracts involved must be impleaded in the action as parties defendant. An action to foreclose a lien must be commenced within two years after the date the loan first becomes subject to acceleration under the loan documents. Liens to secure loans may be foreclosed in the manner provided by RCW 35.67.250, 35.67.260, and 35.67.270.

(7) Loans may be used to secure and repay general obligation or revenue bonds, notes, or other forms of indebtedness issued by or on behalf of the city or town. For the purpose of securing the payment of the principal of and interest on any bonds or notes, the city or town may create a reserve fund. The principal amount of any loan may include a proportionate share of the costs of issuing the bonds, notes, or other indebtedness, and may include up to an additional ten percent of the loan amount to fund a reserve fund.

(8) The amendments to this section made by this act apply

prospectively and do not affect the validity of any loan issued under this section prior to the effective date of this section.

Sec. 11. RCW 54.16.280 and 2002 c 276 s 3 are each amended to read as follows:

(1) Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the district could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another.

(2) For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a district's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier.

(3) Except where otherwise authorized, such assistance shall be limited to:

((~~(1)~~)) (a) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

((~~(2)~~)) (b) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards((~~.~~));

((~~(3)~~)) (c) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

((~~(4)~~)) (d) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

((~~(5)~~)) (4) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. The district may make assistance available in the form of grants made under this section for conservation improvements to existing structures owned or occupied by persons qualifying as poor or infirm consistent with the state Constitution.

(5) The legislative authority of the district shall approve the aggregate amount of such loans and repayment terms by ordinance and may, by ordinance, delegate to staff to approve individual loans consistent with the terms set forth in the ordinance. The district and the property owner shall enter into a loan agreement setting forth the terms of the loan, which agreement may provide for acceleration in the event a loan installment is delinquent. In order to secure loans, the district must have a statutory lien on the property on which conservation improvements so financed are installed or constructed. The lien is paramount and superior to any other lien or encumbrance theretofore or thereafter created, except a lien for general taxes and special assessment district assessments. The loan is a lien upon property from the time the loan agreement is executed. If the legislative authority of the district has acted in good faith and without fraud in granting a loan, the loan is valid and enforceable as such and the lien upon the property is valid.

(6) The district may foreclose a lien in an action in the superior court. All or any of the tracts subject to such a lien may be proceeded against in a single action, and all parties appearing of record as owning or claiming to own or having an interest in or lien upon the tracts involved must be impleaded in the action as parties defendant. An action to foreclose a lien must be commenced within two years after the date the loan first becomes subject to acceleration under the loan documents. Liens to secure loans may be foreclosed in the manner provided by RCW 35.67.250, 35.67.260, and 35.67.270.

(7) Loans may be used to secure and repay general obligation or revenue bonds, notes, or other forms of indebtedness issued by or on behalf of the city or town. For the purpose of securing the payment of the principal of and interest on any bonds or notes, the district may create a reserve fund. The principal amount of any loan may include a proportionate share of the costs of issuing the bonds, notes, or other indebtedness, and may include up to an additional ten percent of the loan amount to fund a reserve fund.

(8) The amendments to this section made by this act apply prospectively and do not affect the validity of any loan issued under this section prior to the effective date of this section.

Sec. 12. RCW 36.94.460 and 1992 c 25 s 3 are each amended to read as follows:

(1) Any county engaged in the sale or distribution of water or in the sale and distribution of energy services through an energy conservation utility formed under section 9 of this act, is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures that are provided water or energy conservation services by the county in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water or energy in the structures under a water or energy conservation plan adopted by the county if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the county to meet future demand.

(2) Except where otherwise authorized, assistance shall be limited to:

((~~(1)~~)) (a) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

((~~(2)~~)) (b) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the county, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

((~~(3)~~)) (c) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

((~~(4)~~)) (d) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

(3) Pay back shall be in the form of incremental additions to the utility bill, billed either together with ((~~[the]~~)) the use charge or separately. Loans shall not exceed one hundred twenty months in length. The county may make assistance available in the form of grants made under this section for conservation improvements to existing structures owned or occupied by persons qualifying as poor or infirm consistent with the state Constitution.

(4) The legislative authority of the county shall approve the aggregate amount of such loans and repayment terms by ordinance and may, by ordinance, delegate to staff to approve individual loans consistent with the terms set forth in the ordinance. The county and the property owner shall enter into a loan agreement setting forth the terms of the loan, which agreement may provide for acceleration in the event a loan installment is delinquent. In order to secure loans, the county must have a statutory lien on the property on which conservation improvements so financed are installed or constructed. The lien is paramount and superior to any other lien or encumbrance theretofore or

thereafter created, except a lien for general taxes and special assessment district assessments. The loan is a lien upon property from the time the loan agreement is executed. If the legislative authority of the county has acted in good faith and without fraud in granting a loan, the loan is valid and enforceable as such and the lien upon the property is valid.

(5) The county may foreclose a lien in an action in the superior court. All or any of the tracts subject to such a lien may be proceeded against in a single action, and all parties appearing of record as owning or claiming to own or having an interest in or lien upon the tracts involved must be impleaded in the action as parties defendant. An action to foreclose a lien must be commenced within two years after the date the loan first becomes subject to acceleration under the loan documents. Liens to secure loans may be foreclosed in the manner provided by RCW 35.67.250, 35.67.260, and 35.67.270.

(6) Loans may be used to secure and repay general obligation or revenue bonds, notes, or other forms of indebtedness issued by or on behalf of the city or town. For the purpose of securing the payment of the principal of and interest on any bonds or notes, the county may create a reserve fund. The principal amount of any loan may include a proportionate share of the costs of issuing the bonds, notes, or other indebtedness, and may include up to an additional ten percent of the loan amount to fund a reserve fund.

(7) The amendments made to this section by this act apply prospectively and do not affect the validity of any loan issued under this section prior to the effective date of this section.

Sec. 13. RCW 70.164.020 and 1995 c 399 s 199 are each amended to read as follows:

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

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

(2) "Energy ((~~assessment~~)) audit" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(3) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(4) "Low income" means household income ((~~that is at or below one hundred twenty-five percent of the federally established poverty level~~)) as defined by the department.

(5) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(6) "Residence" means a dwelling unit as defined by the department.

(7) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, tribal nation, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(8) "Sponsor match" means the share((~~, if any,~~)) of the cost of weatherization to be paid by the sponsor.

(9) "Sustainable residential weatherization" or "weatherization" means ((~~materials or measures, and their installation, that are used to improve the thermal efficiency of a residence~~)) using funds administered by the department to preserve a dwelling unit occupied by a low-income household for activities and materials that result in energy and resource conservation and energy efficiency improvements; repair, indoor air quality, and health and safety investments; and client education. To the extent feasible, funds must be used to support and advance sustainable technologies.

(10) "Weatherizing agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department.

Sec. 14. RCW 70.164.040 and 1987 c 36 s 4 are each amended to read as follows:

(1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested ((~~from the~~

~~low-income weatherization assistance account~~)), the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville Power Administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective, structurally feasible, sustainable residential weatherization materials, measures, and practices, as determined by the department, shall be installed when a low-income residence is weatherized.

(3)(a) The department may in its discretion accept, accept in part, or reject proposals submitted. The department shall allocate funds appropriated from the low-income weatherization assistance account among proposals accepted or accepted in part so as to:

(i) Achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers ((~~and~~)) over the longest period of time;

(ii) Identify and correct, to the extent practical, health and safety problems for residents of low-income households; and

(iii) Leverage, to the extent feasible, environmentally friendly sustainable technologies, practices, and designs.

(b) The department shall, to the extent feasible, ensure a balance of participation in proportion to population among low-income households for: ((~~(a)~~)) (i) Geographic regions in the state; ((~~(b)~~)) (ii) types of fuel used for heating, except that the department shall encourage the use of energy efficient sustainable technologies; ((~~(c)~~)) (iii) owner-occupied and rental residences; and ((~~(d)~~)) (iv) single-family and multifamily dwellings.

(c) The department may allocate funds to a nonutility sponsor

without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(4)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of weatherization, or (ii) make yearly payments to the low-income weatherization assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (a)(i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) The department shall adopt rules to carry out this section.

Sec. 15. RCW 70.164.050 and 1987 c 36 s 5 are each amended to read as follows:

(1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy ((~~assessment~~)) audit be conducted.

Sec. 16. RCW 70.164.060 and 1987 c 36 s 6 are each amended to read as follows:

Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance ((~~in connection with a leased or rented residence~~)), including utility bill reduction, and preservation of affordable housing stock, accrue primarily to low-income tenants occupying a leased or rented residence; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act.

NEW SECTION. **Sec. 17.** Sections 2, 3, and 5 through 8 of this act are each added to chapter 19.27A RCW.

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