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**SUBSTITUTE SENATE BILL 5854**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Kilmer, Pridemore, Ranker, Rockefeller, Marr, Fraser, Kohl-Welles, Kline, Murray, and Keiser)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to reducing climate pollution in the built  
2 environment; amending RCW 19.27A.020, 35.92.360, 54.16.280, and  
3 36.94.460; reenacting and amending RCW 82.32.600; adding a new section  
4 to chapter 35.92 RCW; adding new sections to chapter 19.27A RCW; adding  
5 a new section to chapter 82.16 RCW; creating a new section; and  
6 providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that energy efficiency  
9 is the cheapest, quickest, and cleanest way to meet rising energy  
10 needs, confront climate change, and boost our economy. More than  
11 thirty percent of Washington's greenhouse gas emissions come from  
12 energy use in buildings. Making homes, businesses, and public  
13 institutions more energy efficient will save money, create good local  
14 jobs, enhance energy security, reduce pollution that causes global  
15 warming, and speed economic recovery while reducing the need to invest  
16 in costly new generation. Washington can spur its economy and assert  
17 its regional and national clean energy leadership by putting efficiency  
18 first. Washington can accomplish this by: Promoting super efficient,  
19 low-energy use building codes; requiring disclosure of buildings'

1 energy use to prospective buyers; making public buildings models of  
2 energy efficiency; financing energy saving upgrades to existing  
3 buildings; and reducing utility bills for low-income households.

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

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

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

12 (3) "Consumer-owned utility" includes a municipal electric utility  
13 formed under Title 35 RCW, a public utility district formed under Title  
14 54 RCW, an irrigation district formed under chapter 87.03 RCW, a  
15 cooperative formed under chapter 23.86 RCW, a mutual corporation or  
16 association formed under chapter 24.06 RCW, a port district formed  
17 under Title 53 RCW, or a water-sewer district formed under Title 57  
18 RCW, that is engaged in the business of distributing electricity to one  
19 or more retail electric customers in the state.

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

- 22 (a) To be reliable and available within the time it is needed; and
- 23 (b) To meet or reduce the power demand of the intended consumers at  
24 an estimated incremental system cost no greater than that of the least-  
25 cost similarly reliable and available alternative project or resource,  
26 or any combination thereof.

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

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

30 (7) "Energy service company" has the same meaning as in RCW  
31 43.19.670.

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

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

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

4 (11) "Investor-owned utility" means a corporation owned by  
5 investors that meets the definition of "corporation" as defined in RCW  
6 80.04.010 and is engaged in distributing either electricity or natural  
7 gas, or both, to more than one retail electric customer in the state.

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

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

16 (14) "Net zero energy use" means a building with net energy  
17 consumption of zero over a typical year as measured at utility meter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) Address the need for enhanced code training and enforcement;

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

32 (e) Develop incentives, education, training programs and  
33 certifications, particularly state-approved training or certification  
34 programs, joint apprenticeship programs, or labor-management  
35 partnership programs that train workers for energy-efficiency projects  
36 to ensure proposed programs are designed to increase building

1 professionals' ability to design, construct, and operate buildings that  
2 meet the energy efficiency targets in section 5 of this act;

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

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

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

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

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

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

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

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

28 (b) A residential builder;

29 (c) A commercial builder;

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

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

37 (f) A historic preservation representative, recommended by the

1 Washington historic preservation commission, with experience  
2 implementing the state's standards for the treatment of historic  
3 properties;

- 4 (g) A conservation group working in energy efficiency;
- 5 (h) The Northwest power planning and conservation council;
- 6 (i) An investor-owned utility providing electricity service;
- 7 (j) An investor-owned utility providing natural gas service;
- 8 (k) A public utility district;
- 9 (l) A municipal electric utility;
- 10 (m) An electric cooperative;
- 11 (n) A representative of the energy services companies industry;
- 12 (o) A representative from the legal profession;
- 13 (p) A representative from a financial institution or entity  
14 familiar with municipal bonds;
- 15 (q) An electrical engineer licensed in Washington state,  
16 recommended by a statewide association of electrical engineers;
- 17 (r) A consulting design firm working on building renewable energy  
18 solutions;
- 19 (s) A representative from a labor union representing workers in  
20 energy or building and construction industries or labor affiliates  
21 administering state-approved, joint apprenticeship programs or labor-  
22 management partnership programs that train workers for these  
23 industries;
- 24 (t) A representative of an equipment manufacturer; and
- 25 (u) A mechanical HVAC engineer licensed in Washington state,  
26 recommended by a statewide association of mechanical HVAC engineers.

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

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

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

36 (a) Accelerate construction of increasingly energy efficient homes

1 and buildings that help achieve the broader goal of building zero  
2 fossil-fuel greenhouse gas emission homes and buildings by the year  
3 2031;

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

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

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

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

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

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

23 ~~(ii) In zone 1, walls insulated to a level of R-19 (R value~~  
24 ~~includes insulation only), or constructed with two by four members,~~  
25 ~~R-13 insulation batts, R-3.2 insulated sheathing, and other normal~~  
26 ~~assembly components; in zone 2 walls insulated to a level of R-24 (R~~  
27 ~~value includes insulation only), or constructed with two by six~~  
28 ~~members, R-22 insulation batts, R-3.2 insulated sheathing, and other~~  
29 ~~normal construction assembly components; for the purpose of determining~~  
30 ~~equivalent thermal performance, the wall U-value shall be 0.058 in zone~~  
31 ~~1 and 0.044 in zone 2;~~

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

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

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

1       ~~(vi) Double glazed windows with values not more than U-0.4;~~  
2       ~~(vii) In zone 1 the glazing area may be up to twenty one percent of~~  
3 ~~floor area and in zone 2 the glazing area may be up to seventeen~~  
4 ~~percent of floor area where consideration of the thermal resistance~~  
5 ~~values for other building components and solar heat gains through the~~  
6 ~~glazing result in thermal performance equivalent to that achieved with~~  
7 ~~thermal resistance values for other components determined in accordance~~  
8 ~~with the equivalent thermal performance criteria of (a) of this~~  
9 ~~subsection and glazing area equal to fifteen percent of the floor area.~~  
10 ~~Throughout the state for the purposes of determining equivalent thermal~~  
11 ~~performance, the maximum glazing area shall be fifteen percent of the~~  
12 ~~floor area; and~~  
13       ~~(viii) Exterior doors insulated to a level of R-5; or an exterior~~  
14 ~~wood door with a thermal resistance value of less than R-5 and values~~  
15 ~~for other components determined in accordance with the equivalent~~  
16 ~~thermal performance criteria of (a) of this subsection.~~  
17       ~~(b) New residential buildings which are space heated with all other~~  
18 ~~forms of space heating to achieve energy use equivalent to that used in~~  
19 ~~typical buildings constructed with:~~  
20       ~~(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in~~  
21 ~~zone 2 the code shall contain an exception which permits single rafter~~  
22 ~~or joist vaulted ceilings insulated to a level of R-30 (R value~~  
23 ~~includes insulation only);~~  
24       ~~(ii) Walls insulated to a level of R-19 (R value includes~~  
25 ~~insulation only), or constructed with two by four members, R-13~~  
26 ~~insulation batts, R-3.2 insulated sheathing, and other normal assembly~~  
27 ~~components;~~  
28       ~~(iii) Below grade walls, insulated on the interior side, to a level~~  
29 ~~of R-19 or, if insulated on the exterior side, to a level of R-10 in~~  
30 ~~zone 1 and R-12 in zone 2 (R value includes insulation only);~~  
31       ~~(iv) Floors over unheated spaces insulated to a level of R-19 in~~  
32 ~~zone 1 and R-30 in zone 2 (R value includes insulation only);~~  
33       ~~(v) Slab on grade floors insulated to a level of R-10 at the~~  
34 ~~perimeter;~~  
35       ~~(vi) Heat pumps with a minimum heating season performance factor~~  
36 ~~(HSPF) of 6.8 or with all other energy sources with a minimum annual~~  
37 ~~fuel utilization efficiency (AFUE) of seventy eight percent;~~



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

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

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

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

21       ~~(5) U-values for glazing shall be determined using the area~~  
22 ~~weighted average of all glazing in the building. U-values for vertical~~  
23 ~~glazing shall be determined, certified, and labeled in accordance with~~  
24 ~~the appropriate national fenestration rating council (NFRC) standard,~~  
25 ~~as determined and adopted by the state building code council.~~  
26 ~~Certification of U-values shall be conducted by a certified,~~  
27 ~~independent agency licensed by the NFRC. The state building code~~  
28 ~~council may develop and adopt alternative methods of determining,~~  
29 ~~certifying, and labeling U-values for vertical glazing that may be used~~  
30 ~~by fenestration manufacturers if determined to be appropriate by the~~  
31 ~~council. The state building code council shall review and consider the~~  
32 ~~adoption of the NFRC standards for determining, certifying, and~~  
33 ~~labeling U-values for doors and skylights when developed and published~~  
34 ~~by the NFRC. The state building code council may develop and adopt~~  
35 ~~appropriate alternative methods for determining, certifying, and~~  
36 ~~labeling U-values for doors and skylights. U-values for doors and~~  
37 ~~skylights determined, certified, and labeled in accordance with the~~  
38 ~~appropriate NFRC standard shall be acceptable for compliance with the~~

1 ~~state energy code. Sealed insulation glass, where used, shall conform~~  
2 ~~to, or be in the process of being tested for, ASTM E-774-81 class A or~~  
3 ~~better)) be the 2006 edition of the Washington state energy code, or as~~  
4 ~~amended by rule by the council.~~

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

8 ((+7)) (6)(a) Except as provided in (b) of this subsection, the  
9 Washington state energy code for residential structures shall preempt  
10 the residential energy code of each city, town, and county in the state  
11 of Washington.

12 (b) The state energy code for residential structures does not  
13 preempt a city, town, or county's energy code for residential  
14 structures which exceeds the requirements of the state energy code  
15 ~~((and which was adopted by the city, town, or county prior to March 1,~~  
16 ~~1990. Such cities, towns, or counties may not subsequently amend their~~  
17 ~~energy code for residential structures to exceed the requirements~~  
18 ~~adopted prior to March 1, 1990)).~~

19 ((+8)) (7) The state building code council shall consult with the  
20 department of community, trade, and economic development as provided in  
21 RCW 34.05.310 prior to publication of proposed rules. ~~((The department~~  
22 ~~of community, trade, and economic development shall review the proposed~~  
23 ~~rules for consistency with the guidelines adopted in subsection (4) of~~  
24 ~~this section.))~~ The director of the department of community, trade,  
25 and economic development shall recommend to the state building code  
26 council any changes necessary to conform the proposed rules to the  
27 requirements of this section.

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

30 NEW SECTION. Sec. 5. (1) The council shall adopt state energy  
31 codes that require homes and buildings constructed from 2016 through  
32 2031 to meet the following energy efficiency targets, using the adopted  
33 2006 Washington state energy code as a baseline:

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 6.** (1) On and after January 1, 2010, qualifying  
27 utilities shall maintain records of the energy consumption data of all  
28 nonresidential and qualifying public agency buildings to which they  
29 provide service. This data must be maintained for at least the most  
30 recent twelve months in a format compatible for uploading to the  
31 portfolio manager.

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 7.** By December 31, 2009, the department shall  
30 recommend to the legislature a methodology to determine an energy  
31 performance score for residential buildings and an implementation  
32 strategy to use such information to improve the energy efficiency of  
33 the state's existing housing supply. In developing its strategy, the  
34 department shall seek input from providers of residential energy  
35 audits, building contractors, the residential real estate industry, and  
36 real estate listing and form providers.

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

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

5        (b) Report to general administration, the environmental protection  
6 agency national energy performance rating for each reporting public  
7 facility included in the technical requirements for this rating; and

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

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

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

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

23       (5) By July 1, 2010, general administration shall develop a  
24 technical assistance program to facilitate the implementation of a  
25 preliminary audit and the investment grade energy audit. General  
26 administration shall design the technical assistance program to utilize  
27 audit services provided by utilities or energy services contracting  
28 companies when possible.

29       (6) For each reporting public facility with a national energy  
30 performance rating score below fifty, the qualifying public agency, in  
31 consultation with general administration, shall undertake a preliminary  
32 energy audit by July 1, 2011. If potential cost-effective energy  
33 savings are identified, an investment grade energy audit must be  
34 completed by July 1, 2013. Implementation of cost-effective energy  
35 conservation measures are required by July 1, 2016. For a major  
36 facility that is leased by a state agency, college, or university,  
37 energy audits and implementation of cost-effective energy conservation

1 measures are required only for that portion of the facility that is  
2 leased by the state agency, college, and university.

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

5 (8) By July 1, 2011, general administration shall conduct a review  
6 of facilities not covered by the national energy performance rating.  
7 Based on this review, general administration shall develop a portfolio  
8 of additional facilities that require preliminary energy audits. For  
9 these facilities, the qualifying public agency, in consultation with  
10 general administration, shall undertake a preliminary energy audit by  
11 July 1, 2012. If potential cost-effective energy savings are  
12 identified, an investment grade energy audit must be completed by July  
13 1, 2013.

14 (9) Schools are strongly encouraged to follow the provisions in  
15 subsections (1) through (6) of this section.

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

18 (1) A municipality may engage in the sale or distribution of energy  
19 conservation services for the purpose of providing to its inhabitants  
20 and other persons services that lead to the more efficient consumption  
21 of energy resources, from whatever source generated. Municipalities  
22 undertaking energy conservation financing services or programs pursuant  
23 to this chapter shall coordinate with existing conservation programs  
24 and services offered by the electric or natural gas energy distribution  
25 utility or utilities serving that municipality and shall avoid  
26 duplicating these preexisting programs and services.

27 (2) For the purposes of meeting the state's goals relating to  
28 greenhouse gas emissions in RCW 70.235.020 and reducing the state's  
29 dependence on foreign oil, the provision of conservation services by a  
30 municipality under this section are declared to be a public use and a  
31 public and municipal purpose. A municipality that engages in  
32 conservation services under this section is declared to be engaged in  
33 the distribution of energy conservation services for purposes of  
34 Article VIII, section 10 of the state Constitution, and is authorized  
35 to operate the financing programs authorized in RCW 35.92.360 or  
36 54.16.280, as applicable.

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

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

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

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

20 (1) Any city or town engaged in the generation, sale, or  
21 distribution of energy or in the sale and distribution of conservation  
22 services under section 9 of this act, is hereby authorized, within  
23 limits established by the Constitution of the state of Washington, to  
24 assist the owners of structures or equipment in financing the  
25 acquisition and installation of materials and equipment, for  
26 compensation or otherwise, for the conservation or more efficient use  
27 of energy in such structures or equipment pursuant to an energy  
28 conservation plan adopted by the city or town if the cost per unit of  
29 energy saved or produced by the use of such materials and equipment is  
30 less than the cost per unit of energy produced by the next least costly  
31 new energy resource which the city or town could acquire to meet future  
32 demand. Any financing authorized under this chapter shall only be used  
33 for conservation purposes in existing structures, and such financing  
34 shall not be used for any purpose which results in a conversion from  
35 one energy source to another.

36 (2) For the purposes of this section, "conservation purposes in  
37 existing structures" may include projects to allow a municipal electric

1 utility's customers to generate all or a portion of their own  
2 electricity through the on-site installation of a distributed  
3 electricity generation system that uses as its fuel solar, wind,  
4 geothermal, or hydropower, or other renewable resource that is  
5 available on-site and not from a commercial source. Such projects  
6 shall not be considered "a conversion from one energy source to  
7 another" which is limited to the change or substitution of one  
8 commercial energy supplier for another commercial energy supplier.

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

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

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

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

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

32 ((+5)) (4) Pay back ((shall)) may be in the form of incremental  
33 additions to the utility bill, billed either together with use charge  
34 or separately. Loans shall not exceed ((one hundred twenty)) two  
35 hundred forty months in length. The city or town may make assistance  
36 available in the form of grants made under this section for  
37 conservation improvements to existing structures owned or occupied by



1 persons qualifying as poor or infirm consistent with the state  
2 Constitution.

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

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

28 (7) Loans may be used to secure and repay general obligation or  
29 revenue bonds, notes, or other forms of indebtedness issued by or on  
30 behalf of the city or town. For the purpose of securing the payment of  
31 the principal of and interest on any bonds or notes, the city or town  
32 may create a reserve fund. The principal amount of any loan may  
33 include a proportionate share of the costs of issuing the bonds, notes,  
34 or other indebtedness, including funding a pooled reserve for the  
35 indebtedness, and may include up to an additional ten percent of the  
36 loan amount to fund a loan loss reserve specific to that loan.  
37 Conservation loans originated by a third party may be acquired by the  
38 proceeds of obligations secured by the loan revenues, but only if such

1 loans meet the minimum origination requirements set by the legislative  
2 authority of the municipality under subsection (3) of this section and  
3 a loan agreement, in a form approved by the municipality, is validly  
4 assigned to the municipality.

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

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

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

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

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

36 ~~((1))~~ (a) Providing an inspection of the structure or equipment,  
37 either directly or through one or more inspectors under contract, to

1 determine and inform the owner of the estimated cost of purchasing and  
2 installing conservation materials and equipment for which financial  
3 assistance will be approved and the estimated life cycle savings in  
4 energy costs that are likely to result from the installation of such  
5 materials or equipment;

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

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

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

20 ((+5)) (4) Pay back (~~shall~~) may be in the form of incremental  
21 additions to the utility bill, billed either together with use charge  
22 or separately. Loans shall not exceed (~~one hundred twenty~~) two  
23 hundred forty months in length. The district may make assistance  
24 available in the form of grants made under this section for  
25 conservation improvements to existing structures owned or occupied by  
26 persons qualifying as poor or infirm consistent with the state  
27 Constitution.

28 (5) The legislative authority of the district shall approve the  
29 aggregate amount of such loans and repayment terms by ordinance and  
30 may, by ordinance, delegate to staff to approve individual loans  
31 consistent with the terms set forth in the ordinance. The district and  
32 the property owner shall enter into a loan agreement setting forth the  
33 terms of the loan, which agreement may provide for acceleration in the  
34 event a loan installment is delinquent. In order to secure loans, the  
35 district may have a statutory lien on the property on which  
36 conservation improvements so financed are installed or constructed.  
37 The lien is paramount and superior to any other lien or encumbrance  
38 theretofore or thereafter created, except a lien for general taxes and

1 special assessment district assessments. The loan is a lien upon  
2 property from the time the loan agreement is executed. If the  
3 legislative authority of the district has acted in good faith and  
4 without fraud in granting a loan, the loan is valid and enforceable as  
5 such and the lien upon the property is valid.

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

15 (7) Loans may be used to secure and repay general obligation or  
16 revenue bonds, notes, or other forms of indebtedness issued by or on  
17 behalf of the district. For the purpose of securing the payment of the  
18 principal of and interest on any bonds or notes, the district may  
19 create a reserve fund. The principal amount of any loan may include a  
20 proportionate share of the costs of issuing the bonds, notes, or other  
21 indebtedness, including funding a pooled reserve for the indebtedness,  
22 and may include up to an additional ten percent of the loan amount to  
23 fund a loan loss reserve specific to that loan. Conservation loans  
24 originated by a third party may be acquired by the proceeds of  
25 obligations secured by the loan revenues, but only if such loans meet  
26 the minimum origination requirements set by the legislative authority  
27 of the municipality under subsection (3) of this section and a loan  
28 agreement, in a form approved by the district, is validly assigned to  
29 the district.

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

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

35 (1) Any county engaged in the sale or distribution of water or in  
36 the sale and distribution of energy services under section 9 of this  
37 act, is hereby authorized, within limits established by the

1 Constitution of the state of Washington, to assist the owners of  
2 structures that are provided water or energy conservation services by  
3 the county in financing the acquisition and installation of fixtures,  
4 systems, and equipment, for compensation or otherwise, for the  
5 conservation or more efficient use of water or energy in the structures  
6 under a water or energy conservation plan adopted by the county if the  
7 cost per unit of water saved or conserved by the use of the fixtures,  
8 systems, and equipment is less than the cost per unit of water supplied  
9 by the next least costly new water source available to the county to  
10 meet future demand.

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

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

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

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

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

34 (3) Pay back ~~((shall))~~ may be in the form of incremental additions  
35 to the utility bill, billed either together with ~~((+the))~~ the use  
36 charge or separately. Loans shall not exceed ~~((one hundred twenty))~~  
37 two hundred forty months in length. The county may make assistance  
38 available in the form of grants made under this section for

1 conservation improvements to existing structures owned or occupied by  
2 persons qualifying as poor or infirm consistent with the state  
3 Constitution.

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

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

29 (6) Loans may be used to secure and repay general obligation or  
30 revenue bonds, notes, or other forms of indebtedness issued by or on  
31 behalf of the county. For the purpose of securing the payment of the  
32 principal of and interest on any bonds or notes, the county may create  
33 a reserve fund. The principal amount of any loan may include a  
34 proportionate share of the costs of issuing the bonds, notes, or other  
35 indebtedness, including funding a pooled reserve for the indebtedness,  
36 and may include up to an additional ten percent of the loan amount to  
37 fund a loan loss reserve specific to that loan. Conservation loans  
38 originated by a third party may be acquired by the proceeds of

1 obligations secured by the loan revenues, but only if such loans meet  
2 the minimum origination requirements set by the legislative authority  
3 of the municipality under subsection (3) of this section and a loan  
4 agreement, in a form approved by the municipality, is validly assigned  
5 to the municipality.

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

9 NEW SECTION. Sec. 13. A new section is added to chapter 82.16 RCW  
10 to read as follows:

11 (1)(a) A person who is subject to tax under this chapter on gross  
12 income from sales of electricity, natural gas, or manufactured gas made  
13 to a person for the operation of a qualified building is eligible for  
14 a tax credit.

15 (b) The seller is eligible for the credit if the contract for sale  
16 of electricity or gas to the person for the operation of a qualified  
17 building specifies that the price charged will be reduced or credited  
18 by an amount equal to the gross income from the sale of the electricity  
19 or gas for the fiscal year in which the building becomes a qualified  
20 building multiplied by the corresponding rate in effect at the time of  
21 the sale for the public utility tax under RCW 82.16.020.

22 (c) The credit for the seller is equal to the gross income from the  
23 sale of the electricity or gas to a person for the operation of a  
24 qualified building for the fiscal year in which the building becomes a  
25 qualified building multiplied by the corresponding rate in effect at  
26 the time of the sale for the public utility tax under RCW 82.16.020.

27 (2) The qualified building owner must provide the seller with  
28 documentation verifying that the minimum energy star rating for the  
29 year in which the credit is received has been earned.

30 (3) For purposes of this section:

31 (a) "Building" means a commercial or industrial building.

32 (b) "Qualified building" means: From the effective date of this  
33 section, through January 1, 2010, a qualified building is a commercial  
34 or industrial building that has earned an energy star rating of eighty  
35 during calendar year 2009. For calendar year 2010, a qualified  
36 building is a building that has earned an energy star rating of eighty  
37 during calendar year 2010. For calendar year 2011, a qualified

1 building is a building that has earned an energy star rating of eighty-  
2 five during calendar year 2011. For calendar year 2012, a qualified  
3 building is a building that has earned an energy star rating of ninety  
4 during calendar year 2012.

5 (4) The total combined credits that may be taken under this section  
6 may not exceed five hundred thousand dollars in any fiscal year. The  
7 department may require reporting of the credits taken in a manner and  
8 form as is necessary to keep a running total of the amounts.

9 (5) Credits are available on a first-come basis. The department  
10 shall disallow any credits that would cause the total amount of credits  
11 taken to exceed the fiscal year cap. If the fiscal cap is reached or  
12 exceeded, the department shall notify the seller that no more credits  
13 may be taken during the remainder of the fiscal year. In addition, the  
14 department shall provide written notice to any person who has taken any  
15 tax credits in excess of the fiscal year cap. The notice must  
16 indicate the amount of tax due and provide that the tax be paid within  
17 thirty days from the date of such notice.

18 (6) No portion of an application for credit disallowed under this  
19 section may be carried back or carried forward nor may taxes ineligible  
20 for credit due to the fiscal cap having been reached or exceeded be  
21 carried forward or carried backward.

22 (7) This section expires January 1, 2013.

23 **Sec. 14.** RCW 82.32.600 and 2008 c 81 s 14 and 2008 c 15 s 8 are  
24 each reenacted and amended to read as follows:

25 (1) Persons required to file annual surveys or annual reports under  
26 RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020,  
27 or 82.74.040 and sellers receiving credit under section 13 of this act  
28 must electronically file with the department all surveys, reports,  
29 returns, and any other forms or information the department requires in  
30 an electronic format as provided or approved by the department. As  
31 used in this section, "returns" has the same meaning as "return" in RCW  
32 82.32.050.

33 (2) Any survey, report, return, or any other form or information  
34 required to be filed in an electronic format under subsection (1) of  
35 this section is not filed until received by the department in an  
36 electronic format.



1           (3) The department may waive the electronic filing requirement in  
2 subsection (1) of this section for good cause shown.

3           NEW SECTION.   **Sec. 15.** Sections 2, 3, and 5 through 8 of this act  
4 are each added to chapter 19.27A RCW.

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