Z-0344.2

# SENATE BILL 5116

**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Carlyle, Palumbo, McCoy, Pedersen, Wellman, Das, Rolfes, Frockt, Wilson, C., Kuderer, Nguyen, Keiser, Liias, Hunt, Saldaña, Darneille, and Billig; by request of Governor Inslee

Prefiled 01/10/19.

AN ACT Relating to supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future; amending RCW 19.280.030, 82.08.962, 82.12.962, 80.04.250, and 43.21F.090; adding a new chapter to Title 19 RCW; creating new sections; prescribing penalties; providing expiration dates; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington must address the impacts of climate change by leading the transition to a clean energy economy. One way in which Washington must lead this transition is by transforming its energy supply, modernizing its electricity system, and ensuring that the benefits of this transition are broadly shared throughout the state.

(2) With our wealth of carbon-free hydropower, Washington has some of the cleanest electricity in the United States. But electricity remains a large source of emissions in our state. We are at a critical juncture for transforming our electricity system. By eliminating coal-fired electricity, and transitioning the state's electricity supply to one hundred percent carbon neutral by 2030, we can achieve an entirely carbon free electricity supply by 2045.

(3) The transition to one hundred percent clean energy is underway, but must happen faster than our current policies can deliver. Absent significant and swift reductions in greenhouse gas emissions, climate change poses immediate significant threats to our economy, health, safety, and national security. The prices of clean energy technologies continue to fall, and are, in many cases, competitive or even cheaper than conventional energy sources.

(4) The legislature finds that Washington can accomplish the goals of this act while promoting energy independence, creating high-quality jobs in the clean energy sector, continuing to electrify the transportation sector, maintaining stable and affordable rates for all customers, and protecting clean air and water in the Pacific Northwest. Clean energy creates more jobs per unit of energy produced than fossil fuel sources, so this transition will contribute to job growth in Washington while addressing our climate crisis head on. Our abundance of renewable energy and our strong clean tech sector make Washington well-positioned to be at the forefront of the transition to one hundred percent clean electricity.

(5) The legislature declares that utilities in the state have an important role to play in this transition, and must be fully empowered, through regulatory tools and incentives, to achieve the goals of this policy. In combination with new technology and emerging opportunities for customers, this policy will spur transformational change in the utility industry. Given these changes, the legislature recognizes and finds that the utilities and transportation commission's statutory grant of authority for rate making includes consideration and implementation of performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms where appropriate to achieve fair, just, reasonable, and sufficient rates and its public interest objectives.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternative compliance payment" means the payment established in section 7(2) of this act.

(2) "Attorney general" means the Washington state office of the attorney general.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii)

solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Carbon adder" means a calculation of the economic and societal impacts associated with an incremental increase in carbon dioxide emissions in a calendar year. For calendar year 2019, the carbon adder must be equal to the alternative compliance payment. The carbon adder must be increased each January 1st by one and three-quarter percent, rounded to the nearest dollar.

(5) "Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in part by coal as feedstock, to generate electricity.

(6) "Commission" means the Washington utilities and transportation commission.

(7) "Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

(8) "Consumer-owned utility" means 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, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Demand response" means changes in electric usage by demand-side resources from their normal consumption patterns in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized.

(10) "Department" means the department of commerce.

(11) "Distributed energy resource" means a nonemitting resource that provides electric energy, capacity, or ancillary services to an electric utility and that is located on the distribution system, any subsystem of the distribution system, or behind the customer meter.

(12) "Electric utility" means a consumer-owned utility or an investor-owned utility.

(13) "Emitting electric generation" means electricity from a generating resource that is not a renewable resource that provides electric energy, capacity, or ancillary services to an electric utility and that is produced by a generating facility that emits greenhouse gases as a by-product of energy generation at that facility.

(14) "Energy transformation project" means a project or program that provides energy-related goods or services other than the generation of electricity and that results in a reduction in fossil fuel consumption by the customers of an electric utility and in the emission of greenhouse gases attributable to that consumption. "Energy transformation project" may include but is not limited to: Home weatherization or other energy efficiency measures; support for electric vehicles or related infrastructure; and infrastructure for the storage of renewable energy on the electric grid.

(15) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(16) "Governing body" means the council of a city or town, the commissioners of an irrigation district, municipal electric utility, or public utility district, or the board of directors of an electric cooperative or mutual association that has the authority to set and approve rates.

(17) "Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology by rule under RCW 70.235.010.

(18) "Highly impacted communities" means communities designated under the cumulative impacts analysis in section 18 of this act.

(19) "Investor-owned utility" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(20) "Low-income" means household incomes as defined by the department or commission, provided that the definition may not exceed the higher of eighty percent of area median household income or two hundred percent of the federal poverty level, adjusted for household size.

(21)(a) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate.

(b) "Natural gas" does not include renewable natural gas.

(22)(a) "New large hydroelectric generation" means hydroelectric generation that requires new diversions, new impoundments, new bypass reaches, or expansion of existing reservoirs, constructed after the effective date of this section, unless the diversions, bypass reaches, or reservoir expansions are necessary for the operation of a pumped storage facility that: (i) Does not conflict with existing state or federal fish recovery plans; and (ii) complies with all local, state, and federal laws and regulations.

(b) "New large hydroelectric generation" does not include hydroelectric generation resulting from efficiency or other improvements made to hydroelectric generating facilities existing as of the effective date of this section.

(23) "Nonemitting electric generation" means electricity from a generating facility or a resource, including a distributed energy resource, that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation. For the purposes of sections 4 and 5 of this act, "nonemitting electric generation" does not include new large hydroelectric generation.

(24)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(25) "Renewable energy credit" means a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(26) "Renewable natural gas" means a methane-rich gas derived from organic feedstocks that has been conditioned to meet standards for natural gas derived from fossil fuel sources.

(27) "Renewable resource" means: (a) Water, except for new large hydroelectric generation; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel that is not derived from crops raised on land cleared from old-growth or first growth forests; or (i) biomass energy.

(28) "Retail electric customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(29) "Retail electric load" means the amount of megawatt-hours of weather-adjusted electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers.

(30) "Unbundled renewable energy credit" means a renewable energy credit that is sold, delivered, or purchased separately from electricity.

(31) "Unspecified electricity" means an electricity source for which the fuel attribute is unknown or has been separated from the energy.

(32) "Vulnerable communities" includes communities designated under the cumulative impacts analysis conducted under section 18 of this act.

NEW SECTION. **Sec. 3.** (1) On or before December 31, 2025, all electric utilities must eliminate from electric rates all costs associated with delivering electricity to Washington customers that is generated from a coal-fired resource. This does not include costs associated with decommissioning and remediation of these facilities.

(2) The commission must accelerate depreciation schedules for any coal-fired resource owned by investor-owned utilities to a date no later than December 31, 2025.

(3) The commission may not extend the depreciation schedule for any generating resource that generates electricity through the combustion or oxidation of a fossil fuel.

(4) An electric utility that fails to comply with the requirements of this section must pay the administrative penalty established under section 7(1) of this act.

NEW SECTION. **Sec. 4.** (1) It is the policy of the state that all retail sales of electricity to Washington customers be greenhouse gas neutral by January 1, 2030.

(a) By January 1, 2030, and each year thereafter through December 31, 2044, an electric utility must demonstrate its compliance with this target using a combination of nonemitting electric generation and renewable resources and other technologies that reduce greenhouse gas emissions. To achieve compliance with this target, an electric utility must: (i) Use all cost-effective, reliable, and feasible conservation and efficiency resources and demand response resources to reduce or manage retail electric load; and (ii) use renewable resources in an amount equal to one hundred percent of the utility's average annual retail electric load minus any nonemitting electric generation in operation on the effective date of this section.

(b) Through December 31, 2039, an electric utility may satisfy up to twenty percent of its compliance obligation under (a) of this subsection with an alternative compliance option consistent with this section. Beginning January 1, 2040, and through December 31, 2044, an electric utility may satisfy up to ten percent of its compliance obligation under (a) of this subsection with an alternative compliance option consistent with this section. An alternative compliance option may include any combination of the following:

(i) Making an alternative compliance payment under section 7(2) of this act;

(ii) Using unbundled renewable energy credits; or

(iii) Investing in energy transformation projects, provided such projects meet the requirements of subsection (2) of this section and are not credited as resources used to meet the standard under (a) of this subsection.

(c) Renewable resources used to meet an electric utility's compliance obligation under (a) of this subsection must be verified by the retirement of renewable energy credits. Renewable energy credits must be tracked and retired in the tracking system selected by the department.

(d) Nonemitting electric generation resources used to meet an electric utility's compliance obligation under (a) of this subsection

must be generated during the compliance year and must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting resource.

(2) Investments in energy transformation projects used to satisfy an alternative compliance option provided under subsection (1)(b) of this section must use criteria developed by the department of ecology, in consultation with the department of commerce. Energy transformation projects must demonstrate standards of quality, including:

(a) Measurable impacts that can be demonstrated to result in or facilitate real net reductions in fossil fuel use or greenhouse gas reductions through an approved protocol;

(b) Nonreversible impacts that are permanent;

(c) Impacts that are additional to what would have occurred but for the investment through the energy transformation project as demonstrated by the following: (i) The impacts can be shown to result from the investment itself and not result solely from market forces existing at the time of the investment; (ii) the investment or energy transformation project is not otherwise required by law or regulation, is not used as a compliance mechanism for other federal, state, or local laws or regulations, or is not required as a result of a legal settlement or other legal action or court order binding on the recipient or grantor of the funds; and (iii) any other test for additionality that is identified in an approved protocol for the energy transformation project type; and

(d) Verifiable impacts that allow for the rigorous auditing of quantification methodologies, calculations, and results by state agencies and third-party verifiers in accordance with procedures defined in approved protocols; or

(e) Any other standard included in an approved protocol for the energy transformation project type.

(3) Energy transformation projects must be associated with the consumption of energy in Washington and must not create a new use of fossil fuels in Washington that results in a net increase of fossil fuel usage.

(4) The compliance eligibility of energy transformation projects may be scaled or prorated by an approved protocol in order to distinguish effects related to reductions in electricity usage from reductions in fossil fuel usage.

(5) Any compliance obligation fulfilled through an investment in an energy transformation project is eligible for use only by the electric utility that makes the investment.

(6) The department shall implement rule making, in consultation with the commission and the department of ecology, to establish the guidelines for utilities to implement energy transformation project investments. This rule making must establish:

(a) An initial list of eligible energy transformation project types;

(b) A procedure with opportunity for public input and consultation in order to adapt, adopt, or create protocols for each eligible energy project transformation type; and

(c) Verification procedures, reporting standards, and other logistical issues as necessary.

(7) In approving annual targets established by investor-owned utilities under subsection (1) of this section, the commission, after a hearing, must adopt by order interim targets for each investor-owned utility, informed by the utility's clean energy action plans submitted under RCW 19.280.030. The commission must, at a minimum, adopt interim targets for energy efficiency, demand response, and renewable energy.

(8) In establishing annual targets under subsection (1) of this section, the governing body of a consumer-owned utility must adopt interim targets, informed by the utility's clean energy action plans submitted under RCW 19.280.030. The governing body must, at a minimum, adopt interim targets for energy efficiency, demand response, and renewable energy.

(9) In meeting annual targets established under subsection (1) of this section, an electric utility must demonstrate that it has achieved all cost-effective, reliable, and feasible conservation and efficiency resources, reductions in demand, and demand management prior to making new investments to meet projected demand, and to the maximum extent feasible must:

(a) Achieve targets at the lowest reasonable cost; and

(b) In the acquisition of new resources constructed after the effective date of this section:

(i) Maximize the creation of family wage jobs, insofar as doing so is consistent with (a) of this subsection; and

(ii) Rely on renewable resources and energy storage, insofar as doing so is consistent with (a) of this subsection.

(10) An electric utility that fails to meet the requirements of this section must pay the administrative penalty established under section 7(1) of this act.

NEW SECTION. **Sec. 5.** (1) It is the policy of the state that nonemitting electric generation and renewable resources supply one hundred percent of all retail sales of electricity to Washington customers by January 1, 2045. By January 1, 2045, and each year thereafter, an electric utility must supply one hundred percent of its retail electric sales using nonemitting electric generation and renewable resources, or pay the administrative penalty established under section 7(1) of this act.

(2) Each electric utility must incorporate the policy established under subsection (1) of this section into all relevant planning and procurement practices and demonstrate compliance with this section annually, beginning January 1, 2046.

(3) An electric utility must comply with the standard established under subsection (1) of this section in a manner consistent with the following:

(a) Maintaining and protecting the safety, reliable operation, and balancing of the electric system;

(b) Planning to meet the standard at the lowest reasonable cost; and

(c) Ensuring that all customers are benefiting from the transition to clean energy.

(4) In meeting annual targets established under subsection (1) of this section, an electric utility must demonstrate that it has achieved all cost-effective, reliable, and feasible conservation and efficiency resources, reductions in demand, and demand management prior to making new investments to meet projected demand, and to the maximum extent feasible must:

(a) Achieve targets at the lowest reasonable cost; and

(b) In the acquisition of new resources constructed after the effective date of this section:

(i) Maximize the creation of family wage jobs, insofar as doing so is consistent with (a) of this subsection; and

(ii) Rely on renewable resources and energy storage, insofar as doing so is consistent with (a) of this subsection.

(5) An electric utility that fails to meet the requirements of this section must pay the administrative penalty established under section 7(1) of this act.

(6) The commission, the department, the energy facility site evaluation council, the department of ecology, and all other state agencies shall incorporate the policy established under subsection (1) of this section into all relevant planning and utilize all programs authorized by statute to achieve the policy.

NEW SECTION. **Sec. 6.** By January 1, 2021, and at least every two years thereafter and in compliance with RCW 43.01.036, the commission and the department shall submit a joint report to the legislature. The joint report must include the following:

(1) A review of the policies described in sections 4 and 5 of this act focused on technologies, forecasts, and existing transmission, and an evaluation of safety, environmental and public safety protection, affordability, and system reliability.

(2) An evaluation identifying the potential benefits and impacts on system reliability associated with achieving the policies described in sections 4 and 5 of this act.

(3) An evaluation identifying the nature of any anticipated financial costs and benefits to electric, gas, and water utilities, including customer rate impacts and benefits.

(4) An assessment of the impacts of the policies described in sections 4 and 5 of this act on low-income customers and vulnerable communities.

(5) The barriers to, and benefits of, achieving the policies described in sections 4 and 5 of this act.

NEW SECTION. **Sec. 7.** (1) An electric utility that fails to comply with the standards established in sections 3 through 5 of this act shall pay an administrative penalty to the state of Washington in the amount of one hundred dollars for each megawatt-hour of emitting or unspecified electric generation used to meet the utility's retail electric load. Beginning in 2027, this penalty must be adjusted on a biennial basis according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor. Beginning in 2040, the commission may by rule increase this penalty for investor-owned

utilities if the commission determines that doing so will accelerate utilities' compliance with the standards established under this act and that doing so is in the public interest.

(2) Consistent with the requirements of section 4(1)(b) of this act, a utility may opt to make a payment in the amount of the administrative penalty as an alternative compliance payment, without incurring a penalty for noncompliance.

(3) Upon petition by an investor-owned utility, and after a hearing, the commission may issue an order relieving the utility of its administrative penalty obligation under subsection (1) of this section if it finds that the utility had no choice but to use emitting electric generation to maintain the reliability and safety of the grid. The commission may use its standard practice and procedures to make a reliability determination under this subsection.

(4) The attorney general may relieve a consumer-owned utility of its administrative penalty obligation under subsection (1) of this section if the attorney general finds that the utility had no choice but to use emitting electric generation to maintain reliability and safety of the grid based on documentation submitted by the governing body of the consumer-owned utility.

(5) An electric utility must incorporate the administrative penalty established under subsection (1) of this section as a cost adder when:

(a) Evaluating and selecting conservation policies, programs, and targets;

(b) Developing integrated resource plans and clean energy action plans under RCW 19.280.030; and

(c) Evaluating and selecting resource options.

(6) An electric utility must notify its retail electric customers in published form within three months of paying the administrative penalty established under subsection (1) of this section.

(7) Moneys collected under this section must be deposited into the low-income weatherization and structural rehabilitation assistance account created in RCW 70.164.030.

(8) For an investor-owned utility, the commission shall determine compliance with the requirements of this chapter.

(9) For consumer-owned utilities, the Washington state auditor's office is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities, and the attorney general is responsible for enforcing that compliance.

NEW SECTION. **Sec. 8.** (1) On or before December 31, 2026, and annually thereafter, each electric utility must report to the department on its progress in the preceding year in meeting the standards established in sections 3 through 5 of this act, including the following:

(a) Expected electricity savings from conservation and efficiency resources;

(b) Expenditures on conservation and efficiency resources;

(c) Actual electricity savings results;

(d) The utility's annual retail electric load for the prior five years;

(e) The amount of megawatt-hours of each type of resource acquired;

(f) The type, amount, and cost associated with renewable energy credits retired;

(g) An assessment of the impacts of the standards on low-income customers and vulnerable communities in the utility's service area; and

(h) Actions taken in other sectors to reduce greenhouse gas emissions while reducing greenhouse gas emissions in the electricity sector.

(2) An investor-owned utility must also report all information required in subsection (1) of this section to the commission.

(3) An electric utility must also make reports required in this section available to its retail electric customers.

(4) The department shall ensure that the disclosures required under chapter 19.29A RCW are consistent with the reporting requirements of this act.

NEW SECTION. **Sec. 9.** (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to consumer-owned utilities. Nothing in this subsection may be construed to restrict the rate-making authority of the governing body of a consumer-owned utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4) The commission and department may consult with other state agencies in the development of rules under this chapter.

(5) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by January 1, 2021. These rules may be revised as needed to carry out the intent and purposes of this chapter.

NEW SECTION. **Sec. 10.** The requirements of sections 3 through 9 of this act do not replace or modify the requirements established under chapter 19.285 RCW.

**Sec. 11.** RCW 19.280.030 and 2015 3rd sp.s. c 19 s 9 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years or longer, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, opportunities for development of combined heat and power as an energy and capacity resource, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) An assessment of methods, commercially available technologies, or facilities for integrating renewable resources, and addressing overgeneration events, if applicable to the utility's resource portfolio;

(f) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs, including mitigating overgeneration events and meeting the standards established in sections 3 through 5 of this act, at the lowest reasonable cost and risk to the utility and its ratepayers; ((~~and~~))

(g) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan;

(h) By December 31, 2020, and in each subsequent plan, a ten-year clean energy action plan, which identifies an action plan and proposed interim targets for meeting the standard in section 4 of this act; and

(i) By December 31, 2025, and in each subsequent plan, a twenty-year clean energy action plan, which identifies an action plan and proposed interim targets for meeting the standard in section 5 of this act.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; ((~~and~~))

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not: (i) Renewable resources; (ii) methods, commercially available technologies, or facilities for integrating renewable resources, including addressing any overgeneration event; or (iii) conservation and efficiency resources, why such a decision was made;

(d) By December 31, 2020, and in each subsequent plan, includes a ten-year clean energy action plan, which identifies an action plan and proposed interim targets for meeting the standard in section 4 of this act; and

(f) By December 31, 2025, and in each subsequent plan, includes a twenty-year clean energy action plan, which identifies an action plan

and proposed interim targets for meeting the standard in section 5 of this act.

(3) Assessments for demand side resources included in an integrated resource plan may include combined heat and power systems as one of the measures in a conservation supply curve. The value of recoverable waste heat resulting from combined heat and power must be reflected in analyses of cost-effectiveness under this subsection.

(4) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(5) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(6) Plans shall not be a basis to bring legal action against electric utilities.

(7) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

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

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to reduce the amount of carbon dioxide emissions in Washington. It is the legislature's intent to extend the expiration date of the existing sales and use tax exemption for machinery and equipment used directly in generating certain types of alternative energy, in order to reduce the price charged to customers for that machinery and equipment, thereby inducing some customers to buy machinery and equipment for alternative energy when they might not otherwise, thereby displacing electricity from fossil-fueled generating resources, thereby reducing the amount of carbon dioxide emissions in Washington.

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

**Sec. 13.** RCW 82.08.962 and 2018 c 164 s 5 are each amended to read as follows:

(1)(a) ((~~Except as provided in RCW 82.08.963,~~)) Purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2011, through January 1, ((~~2020~~)) 2030, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

(2) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(b) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an

exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(5) The exemption provided by this section expires September 30, 2017, as it applies to: (a) Machinery and equipment that is used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity; or (b) sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(6) This section expires January 1, ((~~2020~~)) 2030.

**Sec. 14.** RCW 82.12.962 and 2018 c 164 s 7 are each amended to read as follows:

(1)(a) ((~~Except as provided in RCW 82.12.963,~~)) Consumers who have paid the tax imposed by RCW 82.12.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2011, through January 1, ((~~2020~~)) 2030, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The consumer is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

(2)(a) A person claiming an exemption in the form of a remittance under subsection (1)(b) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the

qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(3) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(4) The definitions in RCW 82.08.962 apply to this section.

(5) The exemption provided in subsection (1) of this section does not apply:

(a) To machinery and equipment used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after September 30, 2017; and

(b) To any other machinery and equipment described in subsection (1)(a) of this section, or to sales of or charges made for labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after December 31, ((~~2019~~)) 2029.

(6) This section expires January 1, ((~~2020~~)) 2030.

**Sec. 15.** RCW 80.04.250 and 2011 c 214 s 9 are each amended to read as follows:

(1) The provisions of this section are necessary to ensure that the commission has sufficient flexible authority to determine the value of utility property for rate making purposes and to implement the requirements and full intent of this act.

(2) The commission has power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state by or during the rate effective

period and shall exercise such power whenever it deems such valuation or determination necessary or proper under any of the provisions of this title. ((~~In determining what property is used and useful for providing electric, gas, wastewater company services, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.~~

~~(2)~~)) The valuation may include consideration of any property of the public service company acquired or constructed by or during the rate effective period, including the reasonable costs of construction work in progress, to the extent that the commission finds that such an inclusion is in the public interest and will yield fair, just, reasonable, and sufficient rates.

(3) The commission may provide changes to rates under this section for up to forty-eight months after the rate effective date using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates. The commission must establish an appropriate process to identify, review, and approve public service company property that becomes used and useful for service in this state after the rate effective date.

(4) The commission has the power to make revaluations of the property of any public service company from time to time.

((~~(3)~~)) (5) The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice must be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

(6) Nothing in this section limits the commission's authority to consider and implement performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms.

(7)(a) Electrical companies and gas companies shall use the carbon adder for planning, evaluating, and acquiring all resources, both supply-side and demand-side resources.

(b) For the purposes of this subsection, gas consisting largely of methane and other hydrocarbons derived from the decomposition of

organic material in landfills, wastewater treatment facilities, and anaerobic digesters must be considered a nonemitting resource.

**Sec. 16.** RCW 43.21F.090 and 1996 c 186 s 106 are each amended to read as follows:

(1) The department shall review the state energy strategy ((~~as developed under section 1, chapter 201, Laws of 1991, periodically with the guidance of an advisory committee. For each review, an advisory committee shall be established with a membership resembling as closely as possible the original energy strategy advisory committee specified under section 1, chapter 201, Laws of 1991.~~)) by December 31, 2020, and at least once every eight years thereafter, subject to funding provided for this purpose, for the purpose of aligning the state energy strategy with the requirements of sections 1 through 10 of this act, RCW 43.21F.088, and the emission reduction targets recommended by the department of ecology under RCW 70.235.040. The department must establish an energy strategy advisory committee for each review to provide guidance to the department in conducting the review. The membership of the energy strategy advisory committee must consist of the following:

(a) One person recommended by investor-owned electric utilities;

(b) One person recommended by investor-owned natural gas utilities;

(c) One person employed by or recommended by a natural gas pipeline serving the state;

(d) One person recommended by suppliers of petroleum products;

(e) One person recommended by municipally owned electric utilities;

(f) One person recommended by public utility districts;

(g) One person recommended by industrial energy users;

(h) One person recommended by commercial energy users;

(i) One person recommended by agricultural energy users;

(j) One person recommended by the association of Washington cities;

(k) One person recommended by the Washington association of counties;

(l) One person recommended by Washington Indian tribes;

(m) One person recommended by businesses in the clean energy industry;

(n) One person recommended by labor unions;

(o) Two persons recommended by civic organizations, one of which must be a representative of a civic organization that represents vulnerable communities;

(p) Two persons recommended by environmental organizations;

(q) The chair of the energy facility site evaluation council or the chair's designee;

(r) One of the representatives of the state of Washington to the Pacific Northwest electric power and conservation planning council selected by the governor;

(s) The chair of the utilities and transportation commission or the chair's designee;

(t) One member from each of the two largest caucuses of the house of representatives selected by the speaker of the house of representatives; and

(u) One member from each of the two largest caucuses of the senate selected by the majority leader of the senate.

(2) The chair of the advisory committee must be appointed by the governor from citizen members. The director may establish technical advisory groups as necessary to assist in the development of the strategy. The director shall provide for extensive public involvement throughout the development of the strategy.

(3) Upon completion of a public hearing regarding the advisory committee's advice and recommendations for revisions to the energy strategy, a written report shall be conveyed by the department to the governor and the appropriate legislative committees. ((~~Any~~)) The energy strategy advisory committee established under this section ((~~shall~~)) must be dissolved within three months after their written report is conveyed.

NEW SECTION. **Sec. 17.** (1) By January 1, 2020, the department of commerce must convene an energy and climate policy advisory committee to develop recommendations to the legislature for the coordination of existing resources, or the establishment of new ones, for the purposes of:

(a) Examining the costs and benefits of energy-related policies, programs, functions, activities, and incentives, including but not limited to: (i) Those that reduce greenhouse gas emissions from the electric power generation, transmission, and distribution sector of the economy; and (ii) the standards established in sections 3 through 5 of this act; and

(b) Conducting other energy-related studies and analyses as may be directed by the legislature.

(2) The advisory committee convened under this section must consist of, at minimum, representatives of each the state's public four-year institutions of higher education, the Pacific Northwest National Laboratory, and the Washington state institute for public policy.

(3) Subject to the availability of amounts appropriated for this specific purpose, and in compliance with RCW 43.01.036, the department of commerce must submit its recommendations in a report to the legislature by December 31, 2020.

NEW SECTION. **Sec. 18.** By December 31, 2019, the department of health must conduct a cumulative impact analysis to designate the communities highly impacted by fossil fuel pollution and climate change in Washington. The cumulative impact analysis may integrate with and build upon other population tracking resources used by the department of health and analysis performed by the University of Washington department of environmental and occupational health sciences.

NEW SECTION. **Sec. 19.** This chapter may be known and cited as the Washington clean energy transformation act.

NEW SECTION. **Sec. 20.** Sections 1 through 10 and 19 of this act constitute a new chapter in Title 19 RCW.

NEW SECTION. **Sec. 21.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 22.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**