
ENGROSSED SUBSTITUTE SENATE BILL 6656

State of Washington

61st Legislature

2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Murray, Rockefeller, Fraser, and Shin)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to implementing a pilot program for energy
2 conservation services for cities and towns located wholly within the
3 electric service territories of Tacoma public utilities, Seattle city
4 light, and Puget Sound energy; amending RCW 35.92.070; adding a new
5 chapter to Title 35 RCW; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington
8 state has the opportunity to realize a prosperous, affordable, and
9 clean energy future through energy efficiency.

10 (2) The pilot financing mechanism established in this chapter may
11 enable local governments to expand and improve existing energy
12 conservation and energy efficiency loan programs to aid the private and
13 nonprofit sectors in undertaking residential, commercial, and
14 industrial energy efficiency upgrades.

15 (3) The legislature finds that this financing tool may lead to
16 reductions in household energy bills, provide incentives for the
17 creation of new family-wage jobs in construction, manufacturing, and
18 installation of energy-saving products, encourage investments by the

1 utility sector in a cleaner environment, decrease the need for new
2 power plant construction, and increase energy security.

3 NEW_SECTION. **Sec. 2.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Energy conservation equipment" means equipment for the
6 conservation or more efficient use of energy, regardless of source,
7 installed at or near the intended place of use. However, the equipment
8 may not include any individual equipment or co-owned and controlled
9 cluster of equipment with a generating capacity that exceeds the net
10 metering system electrical generating capacity threshold established in
11 RCW 80.60.010(10)(a). Energy conservation equipment includes, but is
12 not limited to: Weatherizing equipment; energy-conserving lighting
13 systems, heating and cooling systems, equipment to replace inefficient
14 wood burning heating devices, and appliances; and equipment or systems
15 that permit owners or substantial users of property or equipment to
16 generate all or a portion of their own electricity through the on-site
17 installation of distributed electricity generation systems that use as
18 fuel solar, wind, geothermal, or hydropower, or other renewable
19 resources available on-site and not from a commercial source.

20 (2) "Energy conservation services" means the provision of services
21 to assist owners or substantial users of structures or energy
22 conservation equipment in the acquisition, installation, and operation
23 of energy conservation equipment, fixtures, or improvements. Energy
24 conservation services include, but are not limited to: Energy audit
25 services; weatherization services; energy conservation equipment
26 financing, acquisition, and installation services; services to replace
27 inefficient wood burning heating devices; and other measures to reduce
28 energy on-site consumption regardless of source. Energy conservation
29 services may not be considered "a conversion from one energy source to
30 another" that is limited to the change or substitution of one
31 commercial energy supplier for another commercial energy supplier.

32 (3) "Municipality" means a city or town.

33 NEW_SECTION. **Sec. 3.** The provision of energy conservation
34 services under this chapter is declared to be a public use and a public
35 and municipal purpose, which may be conducted through a public utility
36 operated by a municipality. Energy conservation services may be

1 provided through an existing utility system already operated by the
2 municipality. A municipality that provides energy conservation
3 services under this chapter is declared to be engaged in the sale or
4 distribution of energy services under Article VIII, section 10 of the
5 state Constitution.

6 NEW SECTION. **Sec. 4.** (1)(a) The authority provided under this
7 chapter applies to municipalities wholly located within the electric
8 service territories of Tacoma public utilities, Seattle city light, and
9 Puget Sound energy as of the effective date of this section.

10 (b) The authorization in (a) of this subsection is limited to the
11 municipality's boundaries and do not extend to any unincorporated areas
12 in an electric utility's service area.

13 (2)(a) By ordinance, a municipality may create an energy
14 conservation services utility for the purpose of providing to its
15 inhabitants and property owners energy conservation services that lead
16 to the more efficient consumption of energy resources, from whatever
17 source generated, and may construct, purchase, acquire, lease, add to,
18 extend, maintain, and operate a system or program of energy
19 conservation services.

20 (b) Prior to creating an energy conservation services utility, the
21 legislative authority of the municipality must hold a public hearing
22 and make a legislative determination, based on presentations at the
23 hearing, that the energy conservation services proposed to be provided
24 by the municipality will make available additional or complementary
25 services, target underserved areas or populations, or otherwise add
26 incremental value to the preexisting programs and services provided by
27 an electric or natural gas energy distribution utility servicing the
28 municipality.

29 (c) Energy conservation services are only authorized under this
30 chapter if the cost per unit of energy saved or produced by the use of
31 such materials and equipment is less than the cost per unit of energy
32 produced by the next least costly new energy resource that could be
33 acquired to meet future demand.

34 (3) For the purpose of providing energy conservation services, the
35 municipality has the full power to operate and regulate such systems
36 and programs; to enter into agreements for the maintenance and
37 operation of any facilities, equipment, or systems, under such terms

1 and conditions as may be determined by the legislative authority of the
2 municipality to be in the municipality's interest; and other powers as
3 may be necessary for the provision and financing of energy conservation
4 services. Nothing in this chapter authorizes any municipality to
5 generate, transmit, distribute, or sell electricity. Nothing in this
6 chapter may be construed to restrain or limit the authority of any
7 individual, partnership, corporation, private utility, or public
8 utility from establishing and providing energy conservation services.

9 (4) The legislative authority of the municipality has full
10 authority to set rates or charges for energy conservation services
11 provided to customers of the energy conservation service utility if the
12 rates charged are uniform for the same class of customer or service.
13 In classifying customers served or services furnished, the legislative
14 authority may consider: The difference in cost of services to the
15 various customers; the location of the various customers within the
16 municipality; the difference in cost of maintenance, operation, repair,
17 and replacement of the various parts of the system; the different
18 character of the services furnished various customers; the quantity and
19 quality of the services furnished; and any other matters that present
20 a reasonable difference as a ground for distinction. The legislative
21 authority of the municipality has the full authority to regulate and
22 control the energy conservation services so delivered, together with
23 the right to handle and sell or lease any energy conservation
24 equipment, fixtures, or accessories of any kind, necessary and
25 convenient for the provision of energy conservation services.

26 (5) A qualifying utility under RCW 19.280.030 that serves a
27 municipality providing energy conservation services under this chapter
28 may exclusively claim the energy savings achieved by the energy
29 conservation services for purposes of complying with RCW 19.280.040.
30 At the request of the qualifying utility, municipalities must provide
31 the qualifying utility, the department of commerce, and the Washington
32 utilities and transportation commission with any relevant data to
33 effectuate this purpose.

34 (6) A municipality may issue general obligation or revenue bonds,
35 notes, warrants, or other evidences of indebtedness for the purposes of
36 providing all or part of the costs of providing energy conservation
37 services, which shall be issued and sold in accordance with chapters
38 39.44, 39.46, 39.50, and 39.53 RCW. No municipality may enter into a

1 contract to sell loans financed by an energy services conservation
2 utility to a third party for the purpose of securitizing those loans
3 without approval by the legislative authority of the municipality. Any
4 contract that requires a municipality to service loans that it
5 originated must limit the liability of the municipality by prohibiting
6 the commingling of its loans in a securities instrument with loans
7 issued by other parties. No indebtedness may be issued after June 30,
8 2015. However, indebtedness previously issued may continue to be
9 serviced.

10 (7) Municipalities providing energy conservation services under
11 this chapter must establish quality assurance programs that must
12 include the following: (a) A requirement that contractors be
13 prequalified; (b) the maintenance of a list of prequalified
14 contractors; (c) the creation of minimum standards for prequalified
15 contractors that include: (i) Legal compliance procedures; (ii) proper
16 classification of employees; (iii) use of a qualified energy efficiency
17 workforce if such workers are available; and (iv) maintenance of
18 records needed to verify compliance; and (d) a third-party, independent
19 verification process.

20 (8) The authority granted in this chapter must be consistent with,
21 and not limit, supplant, replace, or conflict with, any authority to
22 provide energy conservation services through an existing municipal
23 utility.

24 (9) Energy conservation service utilities formed under this chapter
25 must file annual reports stating the number of customers served, the
26 amount of assistance per customer, the estimated energy savings per
27 customer, and the effectiveness of their quality assurance programs.
28 Municipalities must submit their reports to the respective electric
29 utilities serving their residents, which must consolidate the reports
30 and submit them electronically to the appropriate legislative
31 committees by December 1st each year until the expiration of the pilot
32 program.

33 NEW SECTION. **Sec. 5.** (1) Any municipality engaged in the
34 provision of energy conservation services under this chapter is
35 authorized, within limits established by the Constitution of the state
36 of Washington, to assist the owners of structures or equipment in
37 financing the acquisition and installation of materials and equipment,

1 for compensation or otherwise, for the conservation or more efficient
2 use of energy in such structures or equipment pursuant to an energy
3 conservation plan adopted by the municipality if the cost per unit of
4 energy saved or produced by the use of such materials and equipment is
5 less than the cost per unit of energy produced by the next least costly
6 new energy resource that could be acquired to meet future demand. Any
7 financing authorized under this chapter may only be used for energy
8 conservation services in existing structures.

9 (2) Except where otherwise authorized, such assistance is limited
10 to:

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

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

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

27 (d) Arranging or providing financing for the purchase and
28 installation of approved conservation materials and equipment. The
29 materials and equipment must be purchased from a private business and
30 be installed by a private business or the owner.

31 (3)(a) Pay back must be in the form of incremental additions to an
32 existing local government utility or tax bill, billed either together
33 with use charge or separately. Loans may not exceed two hundred forty
34 months in length. The municipality may make assistance available in
35 the form of grants made under this chapter for energy conservation
36 improvements to existing structures owned or occupied by persons
37 qualifying as poor or infirm consistent with the state Constitution.

38 (b) If pay back is in the form of incremental additions to a

1 property tax bill, and if a servicer maintains an escrow account for a
2 borrower of the energy conservation services related to the property,
3 then the municipality shall contact the servicer of the existing escrow
4 within thirty days to communicate the incremental increase in monthly
5 payments required to make the energy conservation services payment when
6 due.

7 (4) The municipal legislative authority shall approve the aggregate
8 amount of such loans and the repayment terms by ordinance and may, by
9 ordinance, delegate to staff the approval of individual loans
10 consistent with loan program guidelines approved in the ordinance. The
11 municipality and the property owner shall enter into a loan agreement
12 setting forth the terms of the loan, which agreement may provide for
13 acceleration in the event a loan installment is delinquent. In order
14 to secure loans, the municipality shall have a statutory lien on the
15 property, not exceeding five percent of the assessed value of the
16 property as of the last assessment preceding the loan funding date, on
17 which energy conservation improvements so financed are installed or
18 constructed. The statutory lien shall be paramount and superior to any
19 other lien or encumbrance thereafter created except a lien for general
20 taxes, special assessment district assessments, and liens filed under
21 RCW 35.92.360, 54.16.280, or 36.94.460. Any lien for any amount in
22 excess of five percent of the assessed value of the property may be
23 obtained and perfected in accordance with applicable law. The loan
24 shall be a lien upon property from the time the loan agreement is
25 executed. If the municipal legislative authority in granting loans has
26 acted in good faith and without fraud, the loan shall be valid and
27 enforceable as such and the lien thereof upon the property shall be
28 valid.

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

1 (6) The municipality may pledge revenues from loan payments to
2 secure and repay general obligation or revenue bonds, notes, or other
3 forms of indebtedness issued by or on behalf of the municipality, which
4 indebtedness shall be issued in accordance with this chapter and
5 chapters 39.44, 39.46, 39.50, and 39.53 RCW. For the purpose of
6 securing the payment of the principal of and interest on any bonds or
7 notes, the municipality may create a reserve fund. The principal
8 amount of any loan may include a proportionate share of the costs of
9 issuing the bonds, notes, or other indebtedness, and may include up to
10 an additional amount to fund a reserve fund, consistent with RCW
11 39.44.140. The bonds, warrants, or other evidences of indebtedness
12 shall be deemed to be for capital purposes within the meaning of the
13 uniform system of accounts for municipal corporations.

14 **Sec. 6.** RCW 35.92.070 and 1987 c 145 s 1 are each amended to read
15 as follows:

16 When the governing body of a city or town deems it advisable that
17 the city or town purchase, acquire, or construct any such public
18 utility, or make any additions and betterments thereto or extensions
19 thereof, it shall provide therefor by ordinance, which shall specify
20 and adopt the system or plan proposed, and declare the estimated cost
21 thereof, as near as may be, and the ordinance shall be submitted for
22 ratification or rejection by majority vote of the voters of the city or
23 town at a general or special election.

24 (1) No submission shall be necessary:

25 (a) When the work proposed is an addition to, or betterment of,
26 extension of, or an increased water supply for existing waterworks, or
27 an addition, betterment, or extension of an existing system or plant of
28 any other public utility;

29 (b) When in the charter of a city a provision has been adopted
30 authorizing the corporate authorities thereof to provide by ordinance
31 for acquiring, opening, or operating any of such public utilities;
32 (~~or~~)

33 (c) When in the judgment of the corporate authority, the public
34 health is being endangered by the discharge of raw or untreated sewage
35 into any body of water and the danger to the public health may be
36 abated by the construction and maintenance of a sewage disposal plant;
37 or

1 (d) When the governing body of a city or town deems it advisable to
2 form an energy conservation services utility under chapter 35.-- RCW
3 (the new chapter created in section 7 of this act).

4 (2) Notwithstanding subsection (1) of this section, submission to
5 the voters shall be necessary if:

6 (a) The project or work may produce electricity for sale in excess
7 of present or future needs of the water system;

8 (b) The city or town does not own or operate an electric utility
9 system;

10 (c) The work involves an ownership greater than twenty-five percent
11 in a new water supply project combined with an electric generation
12 facility; and

13 (d) The combined facility has an installed capacity in excess of
14 five megawatts.

15 (3) Notwithstanding subsection (1) of this section, submission to
16 the voters shall be necessary to make extensions to a public utility
17 which would expand the previous service capacity by fifty percent or
18 more, where such increased service capacity is financed by the issuance
19 of general obligation bonds.

20 (4) Thirty days' notice of the election shall be given in the
21 official newspaper of the city or town, by publication at least once
22 each week in the paper during such time.

23 (5) When a proposition has been adopted, or in the cases where no
24 submission is necessary, the corporate authorities of the city or town
25 may proceed forthwith to purchase, construct, and acquire the public
26 utility or make additions, betterments, and extensions thereto and to
27 make payment therefor.

28 NEW SECTION. Sec. 7. Sections 1 through 5 of this act constitute
29 a new chapter in Title 35 RCW.

30 NEW SECTION. Sec. 8. Sections 1 through 6 of this act expire June
31 30, 2015.

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