SHB 1022 - H AMD **163** WITHDRAWN 3-20-91
By Representative May

On page 1, strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21F RCW to read as follows:

The legislature finds that the citizens of the state are vitally affected by the development and use of energy. In order to further the interests of the state, a strategy to guide policies and actions impacting energy is needed. A state energy strategy should foster the development of adequate, reliable, secure, economical, and environmentally acceptable energy supplies. A state energy strategy must provide a means by which the various elements of public policy, such as preservation of the quality of the environment, public health and welfare, and economic development are given proper and appropriately balanced consideration in decisions affecting energy supply and use. Such a strategy must be objective in its consideration of energy alternatives and facilitate the efficient operation of energy markets. It must also recognize the basic responsibility that utilities and other energy suppliers have in delivering energy to

the citizens of the state. A state energy strategy must also assure that decisions and actions in other areas of public policy, such as transportation, land use, and protection of the environment take into consideration their impact on energy supply and use.

The legislature directs the development of a state energy strategy that is intended to achieve the foregoing goals. The strategy shall identify significant issues; develop a framework for evaluating policies and actions that affect energy supply and use; establish goals to guide energy-related decisions; recommend appropriate energy policies; and make clear the relevant costs, benefits, risks, and trade-offs.

The legislature further finds that state-funded facilities have significant opportunities for improving the efficiency of their energy use. Implementing such improvements would save public funds and serve as a model of energy-efficient operation and management for the citizens of the state. To accomplish this goal, the legislature directs the establishment of a new program for the effective management of expenditures for energy in public facilities and for the demonstration of the efficient use of energy in public facilities.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21F RCW to read as follows:

(1) The state energy office shall develop a state energy strategy. The strategy shall be developed in consultation with an advisory committee. The advisory committee shall include eighteen

members and represent different regions of the state, including thirteen citizens from the following groups: One person employed by an investor-owned electric utility, one person employed by an investor-owned natural gas utility, one person employed by a supplier of petroleum products, one person employed by a publicly owned electric utility, one person employed by an industrial energy user, one person employed by a commercial energy user, one person employed by an agricultural energy user, two persons representing local government, two persons representing civic organizations, and two representatives of environmental organizations. In addition, the advisory committee shall include one of the representatives of the state of Washington to the pacific northwest electric power and conservation planning council selected by the governor; the chair of the energy facility site evaluation council; one member of the utilities and transportation commission selected by the chair of the commission; one member of the house of representatives selected by the speaker of the house of representatives; and one member of the senate selected by the majority leader of the senate. 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.

(2) The state energy strategy shall consider all forms of energy and each major sector of energy consumption and shall:

(a) Assess future needs of the state for each form of energy;

(b) Identify measures to assist in maintaining adequate, reliable, secure, economic, and environmentally acceptable supplies;

(c) Identify and, to the extent possible, quantify the costs and benefits of energy alternatives including direct economic costs and benefits, environmental costs and benefits, and the costs of inadequate or unreliable energy supplies;

(d) Develop a framework in which public decisions and actions affecting energy supply and use can be evaluated including the impact of decisions in other areas of public policy on energy supply and cost and on the use of energy and the establishment of goals to guide energy-related decisions;

(e) Evaluate the future role of the state energy office and means of financing those activities determined essential to the state; and

(f) Recommend energy goals and policies to the governor and the legislature.

(3) In developing the state energy strategy, the state energy office shall:

(a) Ensure that the information developed is objective and impartial and facilitates the effective and efficient operation of energy markets but shall not mandate the use of one energy source over another;

(b) Draw upon existing public and private sector information and expertise in energy matters to the fullest extent possible

through consultation and cooperation;

(c) Recognize the planning horizons required for each segment of the energy industry and need for state actions and decisions to take those planning horizons into consideration; and

(d) Ensure that the strategy is coordinated with the energy planning activities of federal, state, and private entities and does not duplicate what is already available.

(4) The energy office shall provide a progress report to the house of representatives and senate committees on energy and utilities in January 1992. A final report shall be provided to the governor and the legislature by December 1, 1992.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21F RCW to read as follows:

The Washington state energy office shall prepare a complete and comprehensive analysis of the costs and benefits of constructing cost effective facilities. The analysis shall include:

(1) Identification of sites where cogeneration might be cost effective within the next five years;

(2) Identification of alternative projects for each site;

(3) The cost of construction of the most promising project at each site, together with an estimate of the risk of cost overruns;

(4) The source and terms of financing for each project;

(5) The cost of operating each project, including all overhead and administrative costs;

(6) The cost to the state of administering each project, including the cost to the state connected with the financing of the project, if any;

(7) The amount and form of energy expected to be derived from each project and an estimate of the range within which the output may be expected to vary during the life of the project;

(8) Identification of the potential purchasers of the output of each project;

(9) The revenue expected for each project;

(10) The value of energy used in the host facility;

(11) An estimate of the range within which the revenue and the value of energy used by the host facility may be expected to vary;

(12) An estimate of fuel costs and the range within which such costs may be expected to vary during the life of each project;

(13) All other elements of revenue and cost related to each project;

(14) Identification of the environmental impact of each project;

(15) Identification of the impact of each project on its host institution and adjacent residents and businesses;

(16) A comparison of the costs and benefits of the cogeneration project with the use of a conventional source of

energy production at the host facility; and,

(17) Any other costs and benefits, whether financial, environmental, or otherwise, associated with the project.

The office shall make an interim report on the status of the analysis with preliminary conclusions to the energy and utilities committees of the house of representatives and of the senate on December 1, 1991. The office shall submit a final report to the legislature and the governor on July 1, 1992.

NEW SECTION. **Sec. 4.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include district heating and cooling, or electric production from cogeneration.

(2) "Energy" means energy as defined in RCW 43.21F.025(1).

(3) "Energy efficiency" means conservation, cogeneration, district heating and cooling, or the use of alternative energy resources.

(4) "Energy office" means the Washington state energy office.

(5) "Host institution" means the local administrative body responsible for the public facility at which an energy efficiency measure or project is or may be implemented.

(6) "Person" means a natural person, private or public corporation, partnership, or association, or a combination thereof.

(7) "Project" means a project or projects designed to result in energy efficiency.

(8) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a public entity.

(9) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(10) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(11) "Utility" means privately or publicly owned electric, gas, and heating utilities, electric cooperatives, and federal power marketing agencies, whether located within or without Washington state.

NEW SECTION. **Sec. 5.** (1) State agencies and school districts shall pursue and maintain efficient operation of their facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs.

(2) The energy office shall assist state agencies and school districts and host institutions in identifying, evaluating, and

implementing cost-effective energy efficiency projects at public facilities. The assistance shall include notifying state agencies and school districts of their responsibilities under this chapter; apprising them of opportunities to develop and finance such projects; providing technical and analytical support; reviewing verification procedures for energy savings; and assisting in the structuring and arranging of financing for projects expected to result in reduced energy use or costs, increased energy efficiency, or other net benefits for state agencies, school districts, and the state. The energy office shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services. The energy office shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3) The energy office shall consult with the local gas and electric utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local gas and electric utilities prior to implementing projects in their service territory. Gas and electric utilities shall be offered the opportunity to participate in the development of conservation projects. Electric utilities who are firm power requirements customers of a federal power marketing agency shall be offered the opportunity to participate in the following manner:

(a) Before initiating projects in the utility service territory, the energy office shall notify the local electric utility of state agency or school district facilities that the energy office has targeted for energy conservation projects.

(b) Within sixty days of receipt of this notification, the local electric utility may express interest in these projects by submitting to the energy office a proposal describing the role the utility is willing to play in developing and acquiring the conservation at these facilities.

(c) Upon receipt of this proposal, the energy office shall, through discussions with the local utility, and with involvement from state agencies and school districts, develop a plan for coordinated delivery of conservation services, financing, and utility payment for electric energy conservation to state agency and school district facilities in the utility's service territory. The plan shall identify the local utility in roles that the utility is willing and able to perform and that are consistent with the provisions of section 5(4) of this act.

NEW SECTION. **Sec. 6.** (1) The energy office shall, in coordination with electric utilities and host institutions, facilitate the sale or transmission of energy saved at state agencies and school districts.

(2) State agencies and school districts considering submitting or participating in an offer to a utility for the sale of energy

saved at their facilities shall notify the energy office in advance of preparing the offer of their intention to submit or participate. The advance notice must be at least thirty days before submittal of the offer to the utility.

(3) To ensure an equitable allocation of benefits to the state and its institutions, the energy office shall be involved in the following manner in transactions between public facilities and utilities for sales of energy saved:

(a) The energy office and the host institution must both approve any transaction that provides utilities with energy savings from state or school district facilities.

(b) The energy office and the host institution shall work together throughout the planning and negotiation process for major projects.

(c) The energy office shall negotiate directly with utilities in their resource acquisition programs involving the sale of energy saved at public facilities.

(d) The energy office may base its approval upon a review of an individual project or a utility program. Review by the energy office may include the technical and economic feasibility of a proposed measure or project, the adequacy of procedures proposed for verification of resource performance, the degree of certainty of benefits, and the benefits offered to the state or school district relative to the value of the resource to the utility.

(4) In areas served by utilities purchasing firm power from a

federal power marketing agency, the energy office shall approve agreements between the local utility and the state agency or school district that provide conservation from an institution if the local utility can offer comparable benefit to that offered by the federal power marketing agency. In determining whether the local utility is offering a comparable benefit, the energy office shall consider the net present value of the payment for conservation savings, or of any goods, services, or financial assistance provided by the utility, and the value of any risks borne by the utility. Any direct negative financial impact on a nongrowing utility shall be considered. A "nongrowing utility" is one where its load growth is less than fifty percent of the average load growth for the previous five years of all utilities in the state distributing the same kind of energy resource.

(5) The energy office may waive review and approval for transactions or classes of transactions if it determines that its participation will not further the purpose of this section.

(6) The energy office shall develop and publish guidelines and procedures for compliance with this section by January 1, 1992.

(7) Nothing in this section or in this act should be construed as mandating or requiring public or private utilities to wheel electric energy resources within or beyond their service territories.

NEW SECTION. **Sec. 7.** In order to implement a wide variety

of cost-effective energy efficiency projects for state agencies and school districts and the state, funding and financing sources that may be employed include:

(1) Capital budget funding, where authorized;

(2) Financing contracts under chapter 39.94 RCW;

(3) Third-party financing provided by private or public sources;

(4) Energy service contracts with private or public service providers; and

(5) The energy efficiency account established by section 9 of this act.

NEW SECTION. **Sec. 8.** In addition to any other authorities conferred by law:

(1) The energy office may, with the consent of the state agency or host institution responsible for a facility:

(a) Develop and finance conservation at state and school district facilities;

(b) Contract for energy services, including shared savings, guaranteed savings, or other performance-based arrangements at state facilities;

(c) Contract to sell electric energy saved by energy efficiency projects at public facilities to or with utilities;

(d) Contract to sell thermal energy produced at state facilities to or with utilities or state agencies; and

(e) Participate in negotiations, competitive procurement, and other activities necessary or convenient for these purposes.

(2) Subject to section 5 of this act concerning certain utility transactions, state and regional universities acting independently, and other state agencies acting through the department of general administration or as otherwise authorized, may exercise the authorities enumerated in subsection (1) of this section for their facilities and may also:

(a) Acquire, install, permit, construct, own, operate, and maintain energy efficiency measures or equipment, or both, at their facilities;

(b) Lease state property to private or other public parties for the installation and operation of energy efficiency equipment at state facilities; and

(c) Undertake procurements for third-party development of energy efficiency projects at state facilities, with successful proposers to be selected based on the responsible bid, including nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) Subject to section 6 of this act, school districts may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including shared savings, guaranteed savings, or other performance-based arrangements at state facilities;

(c) Contract to sell electric energy saved by energy efficiency projects at school district facilities to utilities directly or to utilities through third parties.

(4) The leasing and contracting authorities provided in this section may be exercised for terms up to thirty years.

(5) The authorities under this section may be exercised only if their exercise is reasonably expected to yield lower energy use or costs or higher energy efficiency, or other net benefits including cash revenues, site enhancements, or environmental improvements, for the host institution, the agency, or the state over the life of the measures or projects to be undertaken.

NEW SECTION. **Sec. 9.** The energy office may use the net proceeds of bonds issued pursuant to capital budget authorization to make loans, in accordance with RCW 43.21F.060(2), to school districts to provide all or part of the financing for conservation projects. The energy office shall determine the eligibility of such projects for conservation loans and the terms of such loans. The repayments of such loans shall be sufficient to pay, when due, the principal of and interest on the bonds, the proceeds of which are used to fund said conservation loans. The payments of principal of and interest on said conservation loans shall be pledged to the extent required to the payment of said bonds. The obligation to repay such loans shall have status equal to an

obligation to make payment on nonvoted debt. To the extent that a school district applies the proceeds of such loans to a modernization project, such proceeds shall be considered a portion of the school district's share of the costs of such project.

NEW SECTION. **Sec. 10.** (1) The energy efficiency account is hereby created in the state treasury. Moneys in the account may be spent on efforts to reduce future energy use and costs, to increase energy efficiency, or to capture ancillary net benefits from energy projects such as improved reliability for state agencies and school districts. The source of funds for this account include, where appropriate, proceeds of general obligation bonds, project revenue bonds, and loan repayment revenue including repayment of loans initially financed through the energy office in the 1989-91 biennium capital budget. Funds from this account shall be used for construction and implementation of energy efficiency projects. Use of these funds may include project evaluation and verification of benefits, project design, project development, project construction and implementation, and project administration.

(2) Moneys in the account shall be administered by the energy office.

(3) The energy office may accept funds and make deposits to the account from any source, including other federal, state, and local government agencies and revenues from public or private sales of energy saved at public facilities.

(4) Disbursements from the account shall be subject to appropriation.

(5) The energy office shall establish criteria to approve energy efficiency projects to be financed from funds disbursed from this account. The criteria shall include cost-effectiveness, reliability, and environmental costs or benefits. The energy office shall ensure that the criteria are applied with professional standards for engineering and review.

NEW SECTION. **Sec. 11.** (1) The energy services account is created in the state treasury. Funds in this account shall be used by the energy office to provide energy efficiency services to state agencies and school districts including administration of payments on principal and interest of bonds and review of life-cycle cost analyses. This account shall be treated as a budgeted internal services account to be administered by the energy office. Periodically, the director of the office of financial management shall examine the balance of this account. The energy office in conjunction with the office of financial management is empowered to transfer funds from the energy services account to the general fund as appropriate. These transfers shall first be made to meet debt repayment requirements and other requirements under bond resolutions and secondarily for other general fund purposes. The energy office may accept funds and make deposits to the account from any source, including other federal, state, and local

government agencies, utility payments, project fees, loan repayment revenue, and revenues from public or private sales of energy saved at public facilities.

(2) Within one hundred eighty days of the effective date of this act, the energy office shall adopt rules establishing criteria and procedures for setting a fee schedule, working capital requirements, receiving deposits, and making repayments to and disbursements from the account. A biennial business plan shall be prepared for this account.

NEW SECTION. **Sec. 12.** (1) Potential benefits from energy efficiency projects at public facilities include savings in the form of reduced energy costs; revenues from lease payments, sales of energy savings, or other sources; avoided capital costs; site enhancements; additional operating and maintenance resources; and environmental improvements.

(2) To encourage these projects at state facilities, and notwithstanding any other provision of law, the following benefits from energy efficiency projects completed after the effective date of this act shall be apportioned as specified:

(a) As to conservation, state host institutions may retain all net savings in the form of reduced energy costs, and one-half of all net revenues from any transaction with a utility or other entity; and

(b) The remaining net revenues from conservation projects, and remaining net savings and revenues from other energy efficiency projects, shall be remitted to the state for the disposition and uses specified in subsection (4) of this section.

(3) Each state host institution's share of net savings from energy efficiency projects other than conservation and of all net revenues shall be credited to a special local fund, the use of which shall be limited, in priority order, to ongoing operation, maintenance, and improvements of energy systems and energy efficiency measures, to other ongoing and deferred maintenance, and to other infrastructure improvements at the facility.

(4) The state's share of net savings from energy efficiency projects other than conservation and of all net revenues, and any portion of the host institution's share which exceeds its needs for the purposes specified in subsection (3) of this section, shall be deposited in the energy services account established by section 10 of this act.

(5) The use by state host institutions of net savings and net revenues from energy efficiency projects shall be in addition to, and shall not supplant or replace, funding from traditional sources for their normal operations and maintenance or capital budgets. It is the intent of this subsection to ensure that such institutions receive the full benefit intended by this section, and that such effect will not be diminished by budget adjustments inconsistent with this intent.

(6) Energy efficiency projects in school districts, funded in whole or in part with state assistance provided under chapter 28A.525 RCW, or with the financing mechanisms authorized by this chapter, shall be subject to the provisions of this section governing the apportionment and use of savings and revenues from energy efficiency projects.

(7) For purposes of this section, "net" savings and revenues shall mean savings and revenues remaining after payment of project capital costs, including debt service, debt service and loss reserves, arbitrage rebate accounts, mandatory renewal and replacement funds, such other payments and reserves as required by a bond resolution or loan agreement under this chapter, and payment of project operating and maintenance expenses. The energy office shall develop guidelines and procedures for determining net savings and net revenues for energy efficiency projects at state facilities by April 1, 1992.

NEW SECTION. **Sec. 13.** All interest received or earned on money deposited in each and every fund or account provided for in this chapter shall be credited to and become a part of the particular fund upon which the interest accrues, unless the state finance committee directs otherwise.

NEW SECTION. **Sec. 14.** RCW 39.35.030 and 1982 c 159 s 3

are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(2) "Office" means the Washington state energy office.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the ((~~state finance committee~~)) office of financial management. The energy

cost((~~s~~)) projections used shall be those ((~~projected~~)) provided by the state energy office. The office shall update ((~~the~~)) these projections ((~~of energy costs~~)) at least every two years.

(8) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(9) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(10) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(11) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, ((~~cogenerated energy,~~)) photovoltaic devices, and geothermal energy.

NEW SECTION. **Sec. 15.** A new section is added to chapter 39.35 RCW to read as follows:

The office, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method

for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including renewable energy systems prior to commencing the energy consumption analysis;

(3) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(4) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(5) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of this chapter;

(6) Provide for review and approval of life-cycle cost analysis.

NEW SECTION. **Sec. 16.** A new section is added to chapter 39.35 RCW to read as follows:

The energy office may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the energy services account established in

section 10 of this act. The purpose of the fee is to recover the costs by the office for review of the analyses. The office shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The office shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review.

NEW SECTION. **Sec. 17.** The energy office may adopt rules to implement sections 4 through 6, 11, and 14 of this act.

NEW SECTION. **Sec. 18.** Sections 3 through 12 and 16 of this act shall constitute a new chapter in Title 39 RCW.

NEW SECTION. **Sec. 19.** 1982 c 159 s 6 (uncodified) is hereby repealed.

NEW SECTION. **Sec. 20.** 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.

EFFECT: Strikes all references in the substitute bill to cogeneration and district heating and cooling and inserts a requirement for a state energy office cost and benefit analysis of constructing cogeneration projects in state agency and school district facilities.

AN ACT Relating to state energy policy; amending RCW 39.35.030; adding new sections to chapter 43.21F RCW; adding a new chapter to Title 39 RCW; adding new sections to chapter 39.35 RCW; and repealing 1982 c 159 s 6 (uncodified).