
ENGROSSED SUBSTITUTE HOUSE BILL 1022

State of Washington

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By House Committee on Energy & Utilities (originally sponsored by Representatives Cooper, May, Bray, Grant, H. Myers, Basich, Wineberry, R. Meyers, Peery, Phillips, R. Johnson, Wang, Sprenkle, Spanel, Sheldon, Miller, Ogden, Rayburn, Jones, Ludwig, Prentice, Kremen, Leonard, Rust, Braddock, R. King, Nelson, Pruitt, Cantwell, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine, Winsley, Rasmussen and Brekke; by request of Governor Gardner).

Read first time February 25, 1991.

1 AN ACT Relating to state energy policy; amending RCW 39.35.030 and
2 43.88.195; amending 1989 1st ex.s. c 12 s 301 (uncodified); adding a
3 new section to chapter 43.21F RCW; adding new sections to chapter 39.35
4 RCW; adding a new chapter to Title 39 RCW; creating a new section; and
5 repealing 1982 c 159 s 6 (uncodified).

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

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

9 DEVELOPMENT OF STATE ENERGY STRATEGY. (1) The state energy office
10 shall develop a state energy strategy under the guidance of an advisory
11 committee. The advisory committee shall include nineteen members and
12 represent different regions of the state, including fourteen citizens
13 appointed by the governor from the following groups: One person
14 recommended by the investor-owned electric utilities, one person
15 recommended by the investor-owned natural gas utilities, one person

1 recommended by the suppliers of petroleum products, one person
2 recommended by municipally owned electric utilities, one person
3 recommended by the public utility districts, one person recommended by
4 industrial energy users, one person recommended by commercial energy
5 users, one person recommended by agricultural energy users, one person
6 recommended by the association of Washington cities, one person
7 recommended by the Washington association of counties, two persons
8 recommended by civic organizations, and two persons recommended by
9 environmental organizations. In addition, the advisory committee shall
10 include one of the representatives of the state of Washington to the
11 Pacific Northwest electric power and conservation planning council
12 selected by the governor; the chair of the energy facility site
13 evaluation council; one member of the utilities and transportation
14 commission selected by the chair of the commission; one member of the
15 house of representatives selected by the speaker of the house of
16 representatives; and one member of the senate selected by the majority
17 leader of the senate. The chair of the advisory committee will be
18 appointed by the governor from citizen members. The director may
19 establish technical advisory groups as necessary to assist in the
20 development of the strategy. The director shall provide for extensive
21 public involvement throughout the development of the strategy.

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

24 (a) Assess future needs of the state and future resources available
25 for use in the state for each form of energy;

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

28 (c) Identify and, to the extent possible, quantify the costs and
29 benefits of energy alternatives including direct economic costs and

1 benefits, environmental costs and benefits, and the costs of inadequate
2 or unreliable energy supplies;

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

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

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

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

14 (a) Ensure that the information developed is objective and
15 impartial and facilitates the effective and efficient operation of such
16 energy markets as may exist and recognizes and conforms to the pattern
17 of regulation governing public service companies but shall not mandate
18 the use of one energy source over another;

19 (b) Draw upon existing public and private sector information and
20 expertise in energy matters to the fullest extent possible through
21 consultation and cooperation;

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

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

28 (4) The energy office shall provide a progress report to the house
29 of representatives and senate committees on energy and utilities in

1 January 1992. A final report shall be provided to the governor and the
2 legislature by December 1, 1992.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
4 requires otherwise, the definitions in this section apply throughout
5 this chapter.

6 (1) "Cogeneration" means the sequential generation of two or more
7 forms of energy from a common fuel or energy source. If these forms are
8 electricity and thermal energy, then the operating and efficiency
9 standards established by 18 C.F.R. Sec. 292.205 and the definitions
10 established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

11 (2) "Conservation" means reduced energy consumption or energy cost,
12 or increased efficiency in the use of energy, and activities, measures,
13 or equipment designed to achieve such results, but does not include
14 thermal or electric energy production from cogeneration.

15 (3) "Cost-effective" means that the present value to a state agency
16 or school district of the energy reasonably expected to be saved or
17 produced by a facility, activity, measure, or piece of equipment over
18 its useful life, including any compensation received from a utility or
19 the Bonneville power administration, is greater than the net present
20 value of the costs of implementing, maintaining, and operating such
21 facility, activity, measure, or piece of equipment over its useful
22 life, when discounted at the cost of public borrowing.

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

24 (5) "Energy efficiency" means a conservation or cogeneration
25 project.

26 (6) "Energy office" means the Washington state energy office.

27 (7) "Performance-based contracting" means contracts for which
28 payment is conditional on achieving contractually specified energy
29 savings.

1 (8) "Public facility" means a building or structure, or a group of
2 buildings or structures at a single site, owned by a state agency or
3 school district.

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

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

10 (11) "Utility" means privately or publicly owned electric and gas
11 utilities, electric cooperatives and mutuals, whether located within
12 or without Washington state.

13 (12) "Local utility" means the utility or utilities in whose
14 service territory a public facility is located.

15 NEW SECTION. **Sec. 3.** CONSERVATION PROJECTS: ROLES AND
16 RESPONSIBILITIES. (1) Each state agency and school district shall
17 implement cost-effective conservation improvements and maintain
18 efficient operation of its facilities in order to minimize energy
19 consumption and related environmental impacts and reduce operating
20 costs.

21 (2) The energy office shall assist state agencies and school
22 districts in identifying, evaluating, and implementing cost-effective
23 conservation projects at their facilities. The assistance shall
24 include the following:

25 (a) Notifying state agencies and school districts of their
26 responsibilities under this chapter;

27 (b) Apprising state agencies and school districts of opportunities
28 to develop and finance such projects;

1 (c) Providing technical and analytical support, including
2 procurement of performance-based contracting services;

3 (d) Reviewing verification procedures for energy savings; and

4 (e) Assisting in the structuring and arranging of financing for
5 cost-effective conservation projects.

6 (3) Conservation projects implemented under this chapter shall have
7 appropriate levels of monitoring to verify the performance and measure
8 the energy savings over the life of the project. The energy office
9 shall solicit involvement in program planning and implementation from
10 utilities and other energy conservation suppliers, especially those
11 that have demonstrated experience in performance-based energy programs.

12 (4) The energy office shall comply with the requirements of chapter
13 39.80 RCW when contracting for architectural or engineering services.

14 (5) The energy office shall recover any costs and expenses it
15 incurs in providing assistance pursuant to this section, including
16 reimbursement from third parties participating in conservation
17 projects. The energy office shall enter into a written agreement with
18 the state agency or school district for the recovery of costs.

19 NEW SECTION. **Sec. 4.** COORDINATION OF CONSERVATION DEVELOPMENT

20 WITH UTILITIES. (1) The energy office shall consult with the local
21 utilities to develop priorities for energy conservation projects
22 pursuant to this chapter, cooperate where possible with existing
23 utility programs, and consult with the local utilities prior to
24 implementing projects in their service territory.

25 (2) A local utility shall be offered the initial opportunity to
26 participate in the development of conservation projects in the
27 following manner:

28 (a) Before initiating projects in a local utility service
29 territory, the energy office shall notify the local utility in writing,

1 on an annual basis, of public facilities in the local utility's service
2 territory at which the energy office anticipates cost-effective
3 conservation projects will be developed.

4 (b) Within sixty days of receipt of this notification, the local
5 utility may express interest in these projects by submitting to the
6 energy office a written description of the role the local utility is
7 willing to perform in developing and acquiring the conservation at
8 these facilities. This role may include any local utility conservation
9 programs which would be available to the public facility, any
10 competitive bidding or solicitation process which the local utility
11 will be undertaking in accordance with the rules of the utilities and
12 transportation commission or the public utility district, municipal
13 utility, cooperative, or mutual governing body for which the public
14 facility would be eligible, or any other role the local utility may be
15 willing to perform.

16 (c) Upon receipt of the written description from the local utility,
17 the energy office shall, through discussions with the local utility,
18 and with involvement from state agencies and school districts
19 responsible for the public facilities, develop a plan for coordinated
20 delivery of conservation services and financing or make a determination
21 of whether to participate in the local utility's competitive bidding or
22 solicitation process. The plan shall identify the local utility in
23 roles that the local utility is willing to perform and that are
24 consistent with the provisions of section 5(2) (d) and (e) of this act.

25 NEW SECTION. **Sec. 5.** SALE OF CONSERVED ENERGY. (1) It is the
26 intent of this chapter that the state, state agencies, and school
27 districts are compensated fairly for the energy savings provided to
28 utilities and be allowed to participate on an equal basis in any
29 utility conservation program, bidding, or solicitation process. State

1 agencies and school districts shall not receive preferential treatment.
2 For the purposes of this section, any type of compensation from a
3 utility or the Bonneville Power Administration intended to achieve
4 reductions or efficiencies in energy use which are cost-effective to
5 the utility or the Bonneville Power Administration shall be regarded as
6 a sale of energy savings. Such compensation may include credits to the
7 energy bill, low or no interest loans, rebates, or payment per unit of
8 energy saved. The energy office shall, in coordination with utilities,
9 the Bonneville Power Administration, state agencies, and school
10 districts, facilitate the sale of energy savings at public facilities
11 including participation in any competitive bidding or solicitation
12 which has been agreed to by the state agency or school district.
13 Energy savings may only be sold to local utilities or, under conditions
14 specified in this section, to the Bonneville Power Administration. The
15 energy office shall not attempt to sell energy savings occurring in one
16 utility service territory to a different utility. Nothing in this
17 chapter mandates that utilities purchase the energy savings.

18 (2) To ensure an equitable allocation of benefits to the state,
19 state agencies, and school districts, the following conditions shall
20 apply to transactions between utilities or the Bonneville Power
21 Administration and state agencies or school districts for sales of
22 energy savings:

23 (a) A transaction shall be approved by both the energy office and
24 the state agency or school district.

25 (b) The energy office and the state agency or school district shall
26 work together throughout the planning and negotiation process for such
27 transactions unless the energy office determines that its participation
28 will not further the purposes of this section.

29 (c) Before making a decision under (d) of this subsection, the
30 energy office shall review the proposed transaction for its technical

1 and economic feasibility, the adequacy and reasonableness of procedures
2 proposed for verification of project or program performance, the degree
3 of certainty of benefits to the state, state agency, or school
4 district, the degree of risk assumed by the state or school district,
5 the benefits offered to the state, state agency, or school district and
6 such other factors as the energy office determines to be prudent.

7 (d) The energy office shall approve a transaction unless it finds,
8 pursuant to the review in (c) of this subsection, that the transaction
9 would not result in an equitable allocation of costs and benefits to
10 the state, state agency, or school district, in which case the
11 transaction shall be disapproved.

12 (e) In addition to the requirements of (c) and (d) of this
13 subsection, in areas in which the Bonneville Power Administration has
14 a program for the purchase of energy savings at public facilities, the
15 energy office shall approve the transaction unless the local utility
16 cannot offer a benefit substantially equivalent to that offered by the
17 Bonneville Power Administration, in which case the transaction shall be
18 disapproved. In determining whether the local utility can offer a
19 substantially equivalent benefit, the energy office shall consider the
20 net present value of the payment for energy savings; any goods,
21 services, or financial assistance provided by the local utility; and
22 any risks borne by the local utility. Any direct negative financial
23 impact on a nongrowing, local utility shall be considered.

24 (3) Any party to a potential transaction may, within thirty days of
25 any decision to disapprove a transaction made pursuant to subsection
26 (2) (c), (d), or (e) of this section, request an independent reviewer
27 who is mutually agreeable to all parties to the transaction to review
28 the decision. The parties shall within thirty days of selection submit
29 to the independent reviewer documentation supporting their positions.

1 The independent reviewer shall render advice regarding the validity of
2 the disapproval within an additional thirty days.

3 NEW SECTION. **Sec. 6.** AUTHORITIES OF STATE AGENCIES AND SCHOOL
4 DISTRICTS TO IMPLEMENT CONSERVATION. In addition to any other
5 authorities conferred by law:

6 (1) The energy office, with the consent of the state agency or
7 school district responsible for a facility, a state or regional
8 university acting independently, and any other state agency acting
9 through the department of general administration or as otherwise
10 authorized by law, may:

11 (a) Develop and finance conservation at public facilities in
12 accordance with express provisions of this chapter;

13 (b) Contract for energy services, including performance-based
14 contracts; and

15 (c) Contract to sell energy savings from a conservation project at
16 public facilities to local utilities or the bonneville power
17 administration.

18 (2) A state or regional university acting independently, and any
19 other state agency acting through the department of general
20 administration or as otherwise authorized by law, may undertake
21 procurements for third-party development of conservation at its
22 facilities.

23 (3) A school district may:

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

25 (b) Contract for energy services, including performance-based
26 contracts at school district facilities; and

27 (c) Contract to sell energy savings from energy conservation
28 projects at school district facilities to local utilities or the

1 bonneville power administration directly or to local utilities or the
2 bonneville power administration through third parties.

3 (4) In exercising the authority granted by subsections (1), (2),
4 and (3) of this section, a school district or state agency must comply
5 with the provisions of section 5 of this act.

6 NEW SECTION. **Sec. 7.** AUTHORITY TO FINANCE CONSERVATION IN SCHOOL
7 DISTRICTS AND STATE AGENCIES. (1) The energy office, in accordance
8 with RCW 43.21F.060(2) may use appropriated moneys to make loans to
9 school districts to provide all or part of the financing for
10 conservation projects. The energy office shall determine the
11 eligibility of such projects for conservation loans and the terms of
12 such loans. If loans are from moneys appropriated from bond proceeds,
13 the repayments of the loans shall be sufficient to pay, when due, the
14 principal and interest on the bonds and shall be paid to the energy
15 efficiency construction account established in section 11 of this act.
16 To the extent that a school district applies the proceeds of such loans
17 to a modernization or new construction project, such proceeds shall be
18 considered a portion of the school district's share of the costs of
19 such project.

20 (2) State agencies may use financing contracts under chapter 39.94
21 RCW to provide all or part of the funding for conservation projects.
22 The energy office shall determine the eligibility of such projects for
23 financing contracts. The repayments of the financing contracts shall
24 be sufficient to pay, when due, the principal and interest on the
25 contracts.

26 NEW SECTION. **Sec. 8.** ROLES AND RESPONSIBILITIES OF COGENERATION
27 PROJECTS WITH UTILITIES AND PRIVATE DEVELOPERS. (1) Consistent with
28 the region's need to develop cost-effective, high efficiency electric

1 energy resources, the state shall investigate and, if appropriate,
2 pursue development of cost-effective opportunities for cogeneration in
3 existing or new state facilities.

4 (2) To assist state agencies in identifying, evaluating, and
5 developing potential cogeneration projects at their facilities, the
6 energy office shall notify state agencies of their responsibilities
7 under this chapter; apprise them of opportunities to develop and
8 finance such projects; and provide technical and analytical support.
9 The energy office shall recover costs for such assistance through
10 written agreements, including reimbursement from third parties
11 participating in such projects, for any costs and expenses incurred in
12 providing such assistance.

13 (3)(a) The energy office shall identify priorities for cogeneration
14 projects at state facilities, and, where such projects are initially
15 deemed desirable by the energy office and the appropriate state agency,
16 the energy office shall notify the local utility serving the state
17 facility of its intent to conduct a feasibility study at such facility.
18 The energy office shall consult with the local utility and provide the
19 local utility an opportunity to participate in the development of the
20 feasibility study for the state facility it serves.

21 (b) If the local utility has an interest in participating in the
22 feasibility study, it shall notify the energy office and the state
23 agency whose facility or facilities it serves within sixty days of
24 receipt of notification pursuant to (a) of this subsection as to the
25 nature and scope of its desired participation. The energy office,
26 state agency, and local utility shall negotiate the responsibilities,
27 if any, of each in conducting the feasibility study, and these
28 responsibilities shall be specified in a written agreement.

29 (c) If a local utility identifies a potential cogeneration project
30 at a state facility for which it intends to conduct a feasibility

1 study, it shall notify the energy office and the appropriate state
2 agency. The energy office, state agency, and local utility shall
3 negotiate the responsibilities, if any, of each in conducting the
4 feasibility study, and these responsibilities shall be specified in a
5 written agreement. Nothing in this section shall preclude a local
6 utility from conducting an independent assessment of a potential
7 cogeneration project at a state facility.

8 (d) Agreements written pursuant to (a) and (b) of this subsection
9 shall include a provision for the recovery of costs incurred by a local
10 utility in performing a feasibility study in the event such utility
11 does not participate in the development of the cogeneration project.
12 If the local utility does participate in the cogeneration project
13 through energy purchase, project development or ownership, recovery of
14 the utility's costs may be deferred or provided for through negotiation
15 on agreements for energy purchase, project development or ownership.

16 (e) If the local utility declines participation in the feasibility
17 study, the energy office and the state agency may receive and solicit
18 proposals to conduct the feasibility study from other parties.
19 Participation of these other parties shall also be secured and defined
20 by a written agreement which may include the provision for
21 reimbursement of costs incurred in the formulation of the feasibility
22 study.

23 (4) The feasibility study shall include consideration of regional
24 and local utility needs for power, the consistency of the proposed
25 cogeneration project with the state energy strategy, the cost and
26 certainty of fuel supplies, the value of electricity produced, the
27 capability of the state agency to own and/or operate such facilities,
28 the capability of utilities or third parties to own and/or operate such
29 facilities, requirements for and costs of standby sources of power,
30 costs associated with interconnection with the local electric utility's

1 transmission system, the capability of the local electric utility to
2 wheel electricity generated by the facility, costs associated with
3 obtaining wheeling services, potential financial risks and losses to
4 the state and/or state agency, measures to mitigate the financial risk
5 to the state and/or state agency, and benefits to the state and to the
6 state agency from a range of design configurations, ownership, and
7 operation options.

8 (5) Based upon the findings of the feasibility study, the energy
9 office and the state agency shall determine whether a cogeneration
10 project will be cost-effective and whether development of a
11 cogeneration project should be pursued. This determination shall be
12 made in consultation with the local utility or, if the local utility
13 had not participated in the development of the feasibility study, with
14 any third party that may have participated in the development of the
15 feasibility study.

16 (a) Recognizing the local utility's expertise, knowledge, and
17 ownership and operation of the local utility systems, the energy office
18 and the state agency shall have the authority to negotiate directly
19 with the local utility for the purpose of entering into a sole source
20 contract to develop, own, and/or operate the cogeneration facility.
21 The contract may also include provisions for the purchase of
22 electricity or thermal energy from the cogeneration facility, the
23 acquisition of a fuel source, and any financial considerations which
24 may accrue to the state from ownership and/or operation of the
25 cogeneration facility by the local utility.

26 (b) The energy office may enter into contracts through competitive
27 negotiation under this subsection for the development, ownership,
28 and/or operation of a cogeneration facility. In determining an
29 acceptable bid, the energy office and the state agency may consider
30 such factors as technical knowledge, experience, management, staff, or

1 schedule, as may be necessary to achieve economical construction or
2 operation of the project. The selection of a developer or operator of
3 a cogeneration facility shall be made in accordance with procedures for
4 competitive bidding under chapter 43.19 RCW.

5 (c) The energy office shall comply with the requirements of chapter
6 39.80 RCW when contracting for architectural or engineering services.

7 (6)(a) The state may own and/or operate a cogeneration project at
8 a state facility. However, unless the cogeneration project is
9 determined to be cost-effective, based on the findings of the
10 feasibility study, the energy office and state agency shall not pursue
11 development of the project as a state-owned facility. If the project
12 is found to be cost-effective, and the energy office and the state
13 agency agree development of the cogeneration project should be pursued
14 as a state-owned and/or operated facility, the energy office shall
15 assist the state agency in the preparation of a finance and development
16 plan for the cogeneration project. Any such plan shall fully account
17 for and specify all costs to the state for developing and/or operating
18 the cogeneration facility.

19 (b) It is the general intent of this chapter that cogeneration
20 projects developed and owned by the state will be sized to the
21 projected thermal energy load of the state facility over the useful
22 life of the project. The principal purpose and use of such projects is
23 to supply thermal energy to a state facility and not primarily to
24 develop generating capacity for the sale of electricity. For state-
25 owned projects with electricity production in excess of projected
26 thermal requirements, the energy office shall seek and obtain
27 legislative appropriation and approval for development. Nothing in
28 this act shall be construed to authorize any state agency to sell
29 electricity or thermal energy on a retail basis.

1 (7) When a cogeneration facility will be developed, owned, and/or
2 operated by a state agency or third party other than the local serving
3 utility, the energy office and the state agency shall negotiate a
4 written agreement with the local utility. Elements of such an
5 agreement shall include provisions to ensure system safety, provisions
6 to ensure reliability of any interconnected operations equipment
7 necessary for parallel operation and switching equipment capable of
8 isolating the generation facility, the provision of and reimbursement
9 for standby services, if required, and the provision of and
10 reimbursement for wheeling electricity, if the provision of such has
11 been agreed to by the local utility.

12 (8) The state may develop and own a thermal energy distribution
13 system associated with a cogeneration project for the principal purpose
14 of distributing thermal energy at the state facility. If thermal
15 energy is to be sold outside the state facility, the state may only
16 sell the thermal energy to a utility.

17 NEW SECTION. **Sec. 9.** SALE OF COGENERATED ELECTRICITY AND STEAM.
18 It is the intention of this act that the state and its agencies are
19 compensated fairly for the energy provided to utilities from
20 cogeneration at state facilities. Such compensation may include
21 revenues from sales of electricity or thermal energy to utilities,
22 lease of state properties, and value of thermal energy provided to the
23 facility. It is also the intent of this act that the state and its
24 agencies be accorded the opportunity to compete on a fair and
25 reasonable basis to fulfill a utility's new resource acquisition needs
26 when selling the energy produced from cogeneration projects at state
27 facilities through energy purchase agreements.

28 (1)(a) The energy office and state agencies may participate in any
29 utility request for resource proposal process, as either established

1 under the rules and regulations of the utilities and transportation
2 commission, or by the governing board of a public utility district,
3 municipal utility, cooperative, or mutual.

4 (b) If a local utility does not have a request for resource
5 proposal pending, the energy office or a state agency may negotiate an
6 equitable and mutually beneficial energy purchase agreement with that
7 utility.

8 (2) To ensure an equitable allocation of benefits to the state and
9 its agencies, the following conditions shall apply to energy purchase
10 agreements negotiated between utilities and state agencies:

11 (a) An energy purchase agreement shall be approved by both the
12 energy office and the affected state agency.

13 (b) The energy office and the state agency shall work together
14 throughout the planning and negotiation process for energy purchase
15 agreements, unless the energy office determines that its participation
16 will not further the purposes of this section.

17 (c) Before approving an energy purchase agreement, the energy
18 office shall review the proposed agreement for its technical and
19 economic feasibility, the degree of certainty of benefits, the degree
20 of financial risk assumed by the state and/or the state agency, the
21 benefits offered to the state and/or state agency, and other such
22 factors as the energy office deems prudent. The energy office shall
23 approve an energy purchase agreement unless it finds that such an
24 agreement would not result in an equitable allocation of costs and
25 benefits, in which case the transaction shall be disapproved.

26 (3)(a) The state or state agency shall comply with and shall be
27 bound by applicable avoided cost schedules, electric power wheeling
28 charges, interconnection requirements, utility tariffs, and regulatory
29 provisions to the same extent it would be required to comply and would
30 be bound if it were a private citizen. The state shall neither seek

1 regulatory advantage, nor change regulations, regulatory policy,
2 process, or decisions to its advantage as a seller of cogenerated
3 energy. Nothing contained in this act shall be construed to mandate or
4 require public or private utilities to wheel electric energy resources
5 within or beyond their service territories. Nothing contained in this
6 act requires a utility to purchase energy from the state or a state
7 agency or enter into any agreement in connection with a cogeneration
8 facility.

9 (b) The state shall neither construct, nor be party to an agreement
10 for developing a cogeneration project at a state facility for the
11 purpose of supplying its own electrical needs, unless it can show that
12 such an arrangement would be in the economic interest of the state
13 taking into account the cost of (i) interconnection requirements, as
14 specified by the local electric utility, (ii) standby charges, as may
15 be required by the local electric utility, and (iii) the current price
16 of electricity offered by the local electric utility. If the local
17 electric utility can demonstrate that the cogeneration project may
18 place an undue burden on the electric utility, the energy office or the
19 state agency shall attempt to negotiate a mutually beneficial agreement
20 that would minimize the burden upon the ratepayers of the local
21 electric utility.

22 (4) Any party to an energy purchase agreement may, within thirty
23 days of any decision made pursuant to subsection (2)(c) of this section
24 to disapprove the agreement made pursuant to this section, request an
25 independent reviewer who is mutually agreeable to all parties to review
26 the decision. The parties shall within thirty days of selection submit
27 to the independent reviewer documentation supporting their positions.
28 The independent reviewer shall render advice regarding the validity of
29 the disapproval within an additional thirty days.

1 NEW SECTION. **Sec. 10.** AUTHORITIES RELATED TO COGENERATION AT
2 STATE AGENCIES. In addition to any other authorities conferred by law:

3 (1) The energy office, with the consent of the state agency
4 responsible for a facility, a state or regional university acting
5 independently, and any other state agency acting through the department
6 of general administration or as otherwise authorized by law, may:

7 (a) Contract to sell electric energy generated at state facilities
8 to a utility; and

9 (b) Contract to sell thermal energy produced at state facilities to
10 a utility.

11 (2) A state or regional university acting independently, and any
12 other state agency acting through the department of general
13 administration or as otherwise authorized by law, may:

14 (a) Acquire, install, permit, construct, own, operate, and maintain
15 cogeneration and facility heating and cooling measures or equipment, or
16 both, at its facilities;

17 (b) Lease state property for the installation and operation of
18 cogeneration and facility heating and cooling equipment at its
19 facilities;

20 (c) Contract to purchase all or part of the electric or thermal
21 output of cogeneration plants at its facilities;

22 (d) Contract to purchase or otherwise acquire fuel or other energy
23 sources needed to operate cogeneration plants at its facilities; and

24 (e) Undertake procurements for third-party development of
25 cogeneration projects at its facilities, with successful bidders to be
26 selected based on the responsible bid, including nonprice elements
27 listed in RCW 43.19.1911, that offers the greatest net achievable
28 benefits to the state and its agencies.

1 (3) After the effective date of this section, a state agency shall
2 consult with the energy office prior to exercising any authority
3 granted by this section.

4 (4) In exercising the authority granted by subsections (1) and (2)
5 of this section, a state agency must comply with the provisions of
6 section 9 of this act.

7 NEW SECTION. **Sec. 11.** ENERGY EFFICIENCY CONSTRUCTION ACCOUNT.

8 (1) The energy efficiency construction account is hereby created in the
9 state treasury. Moneys in the account may be spent only after
10 appropriation and only for the following purposes:

11 (a) Construction of energy efficiency projects, including project
12 evaluation and verification of benefits, project design, project
13 development, project construction, and project administration.

14 (b) Payment of principal and interest and other costs required
15 under bond covenant on bonds issued for the purpose of (a) of this
16 subsection.

17 (2) Sources for this account may include:

18 (a) General obligation and revenue bond proceeds appropriated by
19 the legislature;

20 (b) Loan repayments under section 7 of this act sufficient to pay
21 principal and interest obligations; and

22 (c) Funding from federal, state, and local agencies.

23 (3) The energy office shall establish criteria for approving energy
24 efficiency projects to be financed from moneys disbursed from this
25 account. The criteria shall include cost-effectiveness, reliability of
26 energy systems, and environmental costs or benefits. The energy office
27 shall ensure that the criteria are applied with professional standards
28 for engineering and review.

1 NEW SECTION. **Sec. 12.** ENERGY EFFICIENCY SERVICES ACCOUNT. (1)

2 The energy efficiency services account is created in the state
3 treasury. Moneys in the account may be spent only after appropriation.
4 Expenditures from the account may be used only (a) for the energy
5 office to provide energy efficiency services to state agencies and
6 school districts including review of life-cycle cost analyses and (b)
7 for transfer by the legislature to the state general fund.

8 (2) All receipts from the following sources shall be deposited into
9 the account:

10 (a) Project fees charged under this section and sections 3, 8, and
11 16 of this act;

12 (b) After payment of any principal and interest obligations, moneys
13 from repayments of loans under section 7 of this act;

14 (c) Revenue from sales of energy generated or saved at public
15 facilities under this chapter, except those retained by state agencies
16 and school districts under section 13 of this act; and

17 (d) Payments by utilities and federal power marketing agencies
18 under this chapter, except those retained by state agencies and school
19 districts under section 13 of this act.

20 (3) The energy office may accept moneys and make deposits to the
21 account from federal, state, or local government agencies.

22 (4) Within one hundred eighty days after the effective date of this
23 act, the energy office shall adopt rules establishing criteria and
24 procedures for setting a fee schedule, establishing working capital
25 requirements, and receiving deposits for this account.

26 NEW SECTION. **Sec. 13.** PROJECT BENEFITS. (1) Potential benefits

27 from energy efficiency projects at public facilities include savings in
28 the form of reduced energy costs; revenues from lease payments, sales

1 of energy or energy savings, or other sources; avoided capital costs;
2 site enhancements; and additional operating and maintenance resources.

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

7 (a) As to conservation, state agencies may retain all net savings
8 in the form of reduced energy costs, and one-half of all net revenues
9 from any transaction with a utility, the Bonneville Power
10 Administration, or other entity;

11 (b) As to cogeneration projects, state agencies may retain one-half
12 of all net savings in the form of reduced energy costs and twenty
13 percent of all net revenues generated by the project from any source
14 except that state institutions of higher education may retain one-half
15 of all net revenues generated by the project; and

16 (c) The remaining net revenues from conservation projects, and
17 remaining net savings and revenues from cogeneration projects, shall be
18 remitted to the state for the disposition and uses specified in
19 subsection (4) of this section.

20 (3) Each state agency's share of net savings from cogeneration
21 projects and of all net revenues shall be credited to a special local
22 account created under section 18 of this act, the use of which shall be
23 limited, in priority order, to ongoing operation, maintenance, and
24 improvements of energy systems and energy efficiency measures, to other
25 ongoing and deferred maintenance, and to other infrastructure
26 improvements at the facility that was the site of the energy efficiency
27 project.

28 (4) The state's share of net savings from cogeneration projects and
29 of all net revenues, and any portion of the state agency's share which
30 exceeds its needs for the purposes specified in subsection (3) of this

1 section, shall be deposited in the energy efficiency services account
2 established by section 12 of this act.

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

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

15 (7) For purposes of this section, "net" savings and revenues shall
16 mean savings and revenues remaining after payment of project capital
17 costs, including debt service, and other payments and reserves as
18 required by a bond resolution or loan agreement under this chapter, and
19 payment of project operating and maintenance expenses. The energy
20 office shall develop guidelines and procedures for determining net
21 savings and net revenues for energy efficiency projects at public
22 facilities by April 1, 1992.

23 (8) The energy office shall report annually until the year 2006 to
24 the director of the office of financial management and the chairs of
25 the senate ways and means committee and the appropriate house of
26 representatives fiscal committees regarding the amount of savings and
27 revenues from energy conservation and cogeneration retained by
28 individual state agencies.

1 **Sec. 14.** RCW 39.35.030 and 1982 c 159 s 3 are each amended to read
2 as follows:

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

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

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

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

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

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

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

19 (7) "Life-cycle cost" means the initial cost and cost of operation
20 of a major facility over its economic life. This shall be calculated
21 as the initial cost plus the operation, maintenance, and energy costs
22 over its economic life, reflecting anticipated increases in these costs
23 discounted to present value at the current rate for borrowing public
24 funds, as determined by the ~~((state finance committee))~~ office of
25 financial management. The energy cost~~((s))~~ projections used shall be
26 those ~~((projected))~~ provided by the state energy office. The office
27 shall update ~~((the))~~ these projections ~~((of energy costs))~~ at least
28 every two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (12) "Cogeneration" means the sequential generation of two or more
8 forms of energy from a common fuel or energy source. Where these forms
9 are electricity and thermal energy, then the operating and efficiency
10 standards established by 18 C.F.R. Sec. 292.205 and the definitions
11 established by 18 C.F.R. 292.202 (c) through (m) as of the effective
12 date of this act shall apply.

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

15 GUIDELINES FOR LIFE-CYCLE COST ANALYSIS. The office, in
16 consultation with affected public agencies, shall develop and issue
17 guidelines for administering this chapter. The purpose of the
18 guidelines is to define a procedure and method for performance of
19 life-cycle cost analysis to promote the selection of low-life-cycle
20 cost alternatives. At a minimum, the guidelines must contain
21 provisions that:

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

24 (2) Identify energy components and system alternatives including
25 renewable energy systems and cogeneration applications prior to
26 commencing the energy consumption analysis;

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

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

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

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

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

9 LIFE-CYCLE COST ANALYSIS REVIEW FEES. The energy office may impose
10 fees upon affected public agencies for the review of life-cycle cost
11 analyses. The fees shall be deposited in the energy efficiency
12 services account established in section 12 of this act. The purpose of
13 the fees is to recover the costs by the office for review of the
14 analyses. The office shall set fees at a level necessary to recover
15 all of its costs related to increasing the energy efficiency of
16 state-supported new construction. The fees shall not exceed one-tenth
17 of one percent of the total cost of any project or exceed two thousand
18 dollars for any project unless mutually agreed to. The office shall
19 provide detailed calculation ensuring that the energy savings resulting
20 from its review of life-cycle cost analysis justify the costs of
21 performing that review.

22 NEW SECTION. **Sec. 17.** ADOPTION OF RULES. The energy office may
23 adopt rules to implement sections 3 through 5, 8, 9, 13, and 15 of this
24 act.

25 **Sec. 18.** RCW 43.88.195 and 1979 c 151 s 140 are each amended to
26 read as follows:

1 After August 11, 1969, no state agency, state institution, state
2 institution of higher education, which shall include all state
3 universities, regional universities, The Evergreen State College, and
4 community colleges, shall establish any new accounts or funds which are
5 to be located outside of the state treasury: PROVIDED, That the office
6 of financial management shall be authorized to grant permission for the
7 establishment of such an account or fund outside of the state treasury
8 only when the requesting agency presents compelling reasons of economy
9 and efficiency which could not be achieved by placing such funds in the
10 state treasury. When the director of financial management authorizes
11 the creation of such fund or account, ((he)) the director shall
12 forthwith give written notice of the fact to the standing committees on
13 ways and means of the house and senate: PROVIDED FURTHER, That the
14 office of financial management may grant permission for the
15 establishment of accounts outside of the state treasury for the
16 purposes of section 13 of this act.

17 **Sec. 19.** 1989 1st ex.s. c 12 s 301 (uncodified) is amended to read
18 as follows:

19 FOR THE WASHINGTON STATE ENERGY OFFICE

20 Energy conservation projects (90-4-001)

21 The appropriation in this section is subject to the following
22 conditions and limitations: The department shall contract with the
23 following agencies for the amounts specified to undertake energy
24 conservation projects. Each contract shall require the agencies listed
25 below to deposit into the energy ((conservation account, hereby created
26 in the state treasury)) efficiency services account, created in section
27 12 of this act, an amount equal to the contract amount. The payback
28 period for the contracted amount shall be determined by the department,
29 but shall not exceed six years.

1 (1) No more than \$1,033,000 shall be expended for energy
2 conservation projects for Military Department facilities;

3 (2) No more than \$361,600 shall be expended for energy conservation
4 projects for the department of social and health services;

5 (3) No more than \$552,000 shall be expended for energy conservation
6 projects for The Evergreen State College.

7 Reappropriation Appropriation

8 St Bldg Constr Acct 1,946,600

9 Prior Biennia Future Biennia Total

10 2,199,000 4,145,600

11 NEW SECTION. **Sec. 20.** CODIFICATION INSTRUCTIONS. Sections 2
12 through 13 and 17 of this act shall constitute a new chapter in Title
13 39 RCW.

14 NEW SECTION. **Sec. 21.** CAPTIONS NOT LAW. Captions as used in this
15 act constitute no part of the law.

16 NEW SECTION. **Sec. 22.** REPEALER. 1982 c 159 s 6 (uncodified) is
17 repealed.

18 NEW SECTION. **Sec. 23.** SEVERABILITY CLAUSE. If any provision of
19 this act or its application to any person or circumstance is held
20 invalid, the remainder of the act or the application of the provision
21 to other persons or circumstances is not affected.