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**ENGROSSED SUBSTITUTE SENATE BILL 5245**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators Thorsness, Sutherland, Williams, Jesernig, Stratton, Bauer and Conner; by request of Governor Gardner).

Read first time March 5, 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; adding a new section to  
5 Title 28A RCW; creating a new section; and repealing 1982 c 159 s 6  
6 (uncodified).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) "Energy efficiency project" means a conservation or  
27 cogeneration project.

1 (6) "Energy efficiency services" means assistance furnished by the  
2 energy office to state agencies and school districts in identifying,  
3 evaluating, and implementing energy efficiency projects.

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

5 (8) "Performance-based contracting" means contracts for which  
6 payment is conditional on achieving contractually specified energy  
7 savings.

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

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

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

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

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

22 NEW SECTION. **Sec. 3.** CONSERVATION PROJECTS: ROLES AND  
23 RESPONSIBILITIES. (1) Each state agency and school district shall  
24 implement cost-effective conservation improvements and maintain  
25 efficient operation of its facilities in order to minimize energy  
26 consumption and related environmental impacts and reduce operating  
27 costs.

28 (2) The energy office shall assist state agencies and school  
29 districts in identifying, evaluating, and implementing cost-effective

1 conservation projects at their facilities. The assistance shall  
2 include the following:

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

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

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

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

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

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

18 (4) The energy office shall comply with the requirements of chapter  
19 39.80 RCW when contracting for architectural or engineering services.

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

25 NEW SECTION. **Sec. 4.** COORDINATION OF CONSERVATION DEVELOPMENT  
26 WITH UTILITIES. (1) The energy office shall consult with the local

27 utilities to develop priorities for energy conservation projects  
28 pursuant to this chapter, cooperate where possible with existing

1 utility programs, and consult with the local utilities prior to  
2 implementing projects in their service territory.

3 (2) A local utility shall be offered the initial opportunity to  
4 participate in the development of conservation projects in the  
5 following manner:

6 (a) Before initiating projects in a local utility service  
7 territory, the energy office shall notify the local utility in writing,  
8 on an annual basis, of public facilities in the local utility's service  
9 territory at which the energy office anticipates cost-effective  
10 conservation projects will be developed.

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

23 (c) Upon receipt of the written description from the local utility,  
24 the energy office shall, through discussions with the local utility,  
25 and with involvement from state agencies and school districts  
26 responsible for the public facilities, develop a plan for coordinated  
27 delivery of conservation services and financing or make a determination  
28 of whether to participate in the local utility's competitive bidding or  
29 solicitation process. The plan shall identify the local utility in

1 roles that the local utility is willing to perform and that are  
2 consistent with the provisions of section 5(2) (d) and (e) of this act.

3 NEW SECTION. **Sec. 5.** SALE OF CONSERVED ENERGY. (1) It is the  
4 intent of this chapter that the state, state agencies, and school  
5 districts are compensated fairly for the energy savings provided to  
6 utilities and be allowed to participate on an equal basis in any  
7 utility conservation program, bidding, or solicitation process. State  
8 agencies and school districts shall not receive preferential treatment.  
9 For the purposes of this section, any type of compensation from a  
10 utility or the Bonneville power administration intended to achieve  
11 reductions or efficiencies in energy use which are cost-effective to  
12 the utility or the Bonneville power administration shall be regarded as  
13 a sale of energy savings. Such compensation may include credits to the  
14 energy bill, low or no interest loans, rebates, or payment per unit of  
15 energy saved. The energy office shall, in coordination with utilities,  
16 the Bonneville power administration, state agencies, and school  
17 districts, facilitate the sale of energy savings at public facilities  
18 including participation in any competitive bidding or solicitation  
19 which has been agreed to by the state agency or school district.  
20 Energy savings may only be sold to local utilities or, under conditions  
21 specified in this section, to the Bonneville power administration. The  
22 energy office shall not attempt to sell energy savings occurring in one  
23 utility service territory to a different utility. Nothing in this  
24 chapter mandates that utilities purchase the energy savings.

25 (2) To ensure an equitable allocation of benefits to the state,  
26 state agencies, and school districts, the following conditions shall  
27 apply to transactions between utilities or the Bonneville power  
28 administration and state agencies or school districts for sales of  
29 energy savings:

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

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

7 (c) Before making a decision under (d) of this subsection, the  
8 energy office shall review the proposed transaction for its technical  
9 and economic feasibility, the adequacy and reasonableness of procedures  
10 proposed for verification of project or program performance, the degree  
11 of certainty of benefits to the state, state agency, or school  
12 district, the degree of risk assumed by the state or school district,  
13 the benefits offered to the state, state agency, or school district and  
14 such other factors as the energy office determines to be prudent.

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

20 (e) In addition to the requirements of (c) and (d) of this  
21 subsection, in areas in which the Bonneville Power Administration has  
22 a program for the purchase of energy savings at public facilities, the  
23 energy office shall approve the transaction unless the local utility  
24 cannot offer a benefit substantially equivalent to that offered by the  
25 Bonneville Power Administration, in which case the transaction shall be  
26 disapproved. In determining whether the local utility can offer a  
27 substantially equivalent benefit, the energy office shall consider the  
28 net present value of the payment for energy savings; any goods,  
29 services, or financial assistance provided by the local utility; and

1 any risks borne by the local utility. Any direct negative financial  
2 impact on a nongrowing, local utility shall be considered.

3 (3) Any party to a potential transaction may, within thirty days of  
4 any decision to disapprove a transaction made pursuant to subsection  
5 (2) (c), (d), or (e) of this section, request an independent reviewer  
6 who is mutually agreeable to all parties to the transaction to review  
7 the decision. The parties shall within thirty days of selection submit  
8 to the independent reviewer documentation supporting their positions.  
9 The independent reviewer shall render advice regarding the validity of  
10 the disapproval within an additional thirty days.

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

14 (1) The energy office, with the consent of the state agency or  
15 school district responsible for a facility, a state or regional  
16 university acting independently, and any other state agency acting  
17 through the department of general administration or as otherwise  
18 authorized by law, may:

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

21 (b) Contract for energy services, including performance-based  
22 contracts; and

23 (c) Contract to sell energy savings from a conservation project at  
24 public facilities to local utilities or the Bonneville power  
25 administration.

26 (2) A state or regional university acting independently, and any  
27 other state agency acting through the department of general  
28 administration or as otherwise authorized by law, may undertake

1 procurements for third-party development of conservation at its  
2 facilities.

3 (3) A school district may:

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

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

7 (c) Contract to sell energy savings from energy conservation  
8 projects at school district facilities to local utilities or the  
9 Bonneville power administration directly or to local utilities or the  
10 Bonneville power administration through third parties.

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

14 NEW SECTION. **Sec. 7.** AUTHORITY TO FINANCE CONSERVATION IN SCHOOL  
15 DISTRICTS AND STATE AGENCIES. (1) The energy office, in

16 accordance with RCW 43.21F.060(2) may use appropriated moneys to make  
17 loans to school districts to provide all or part of the financing for  
18 conservation projects. The energy office shall determine the  
19 eligibility of such projects for conservation loans and the terms of  
20 such loans. If loans are from moneys appropriated from bond proceeds,  
21 the repayments of the loans shall be sufficient to pay, when due, the  
22 principal and interest on the bonds and shall be paid to the energy  
23 efficiency construction account established in section 11 of this act.  
24 To the extent that a school district applies the proceeds of such loans  
25 to a modernization or new construction project, such proceeds shall be  
26 considered a portion of the school district's share of the costs of  
27 such project.

28 (2) State agencies may use financing contracts under chapter 39.94  
29 RCW to provide all or part of the funding for conservation projects.

1 The energy office shall determine the eligibility of such projects for  
2 financing contracts. The repayments of the financing contracts shall  
3 be sufficient to pay, when due, the principal and interest on the  
4 contracts.

5 NEW SECTION. **Sec. 8.** ROLES AND RESPONSIBILITIES OF COGENERATION  
6 PROJECTS WITH UTILITIES AND PRIVATE DEVELOPERS. (1) Consistent with

7 the region's need to develop cost-effective, high efficiency electric  
8 energy resources, the state shall investigate and, if appropriate,  
9 pursue development of cost-effective opportunities for cogeneration in  
10 existing or new state facilities.

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

20 (3)(a) The energy office shall identify priorities for cogeneration  
21 projects at state facilities, and, where such projects are initially  
22 deemed desirable by the energy office and the appropriate state agency,  
23 the energy office shall notify the local utility serving the state  
24 facility of its intent to conduct a feasibility study at such facility.  
25 The energy office shall consult with the local utility and provide the  
26 local utility an opportunity to participate in the development of the  
27 feasibility study for the state facility it serves.

28 (b) If the local utility has an interest in participating in the  
29 feasibility study, it shall notify the energy office and the state

1 agency whose facility or facilities it serves within sixty days of  
2 receipt of notification pursuant to (a) of this subsection as to the  
3 nature and scope of its desired participation. The energy office,  
4 state agency, and local utility shall negotiate the responsibilities,  
5 if any, of each in conducting the feasibility study, and these  
6 responsibilities shall be specified in a written agreement.

7 (c) If a local utility identifies a potential cogeneration project  
8 at a state facility for which it intends to conduct a feasibility  
9 study, it shall notify the energy office and the appropriate state  
10 agency. The energy office, state agency, and local utility shall  
11 negotiate the responsibilities, if any, of each in conducting the  
12 feasibility study, and these responsibilities shall be specified in a  
13 written agreement. Nothing in this section shall preclude a local  
14 utility from conducting an independent assessment of a potential  
15 cogeneration project at a state facility.

16 (d) Agreements written pursuant to (a) and (b) of this subsection  
17 shall include a provision for the recovery of costs incurred by a local  
18 utility in performing a feasibility study in the event such utility  
19 does not participate in the development of the cogeneration project.  
20 If the local utility does participate in the cogeneration project  
21 through energy purchase, project development or ownership, recovery of  
22 the utility's costs may be deferred or provided for through negotiation  
23 on agreements for energy purchase, project development or ownership.

24 (e) If the local utility declines participation in the feasibility  
25 study, the energy office and the state agency may receive and solicit  
26 proposals to conduct the feasibility study from other parties.  
27 Participation of these other parties shall also be secured and defined  
28 by a written agreement which may include the provision for  
29 reimbursement of costs incurred in the formulation of the feasibility  
30 study.

1 (4) The feasibility study shall include consideration of regional  
2 and local utility needs for power, the consistency of the proposed  
3 cogeneration project with the state energy strategy, the cost and  
4 certainty of fuel supplies, the value of electricity produced, the  
5 capability of the state agency to own and/or operate such facilities,  
6 the capability of utilities or third parties to own and/or operate such  
7 facilities, requirements for and costs of standby sources of power,  
8 costs associated with interconnection with the local electric utility's  
9 transmission system, the capability of the local electric utility to  
10 wheel electricity generated by the facility, costs associated with  
11 obtaining wheeling services, potential financial risks and losses to  
12 the state and/or state agency, measures to mitigate the financial risk  
13 to the state and/or state agency, and benefits to the state and to the  
14 state agency from a range of design configurations, ownership, and  
15 operation options.

16 (5) Based upon the findings of the feasibility study, the energy  
17 office and the state agency shall determine whether a cogeneration  
18 project will be cost-effective and whether development of a  
19 cogeneration project should be pursued. This determination shall be  
20 made in consultation with the local utility or, if the local utility  
21 had not participated in the development of the feasibility study, with  
22 any third party that may have participated in the development of the  
23 feasibility study.

24 (a) Recognizing the local utility's expertise, knowledge, and  
25 ownership and operation of the local utility systems, the energy office  
26 and the state agency shall have the authority to negotiate directly  
27 with the local utility for the purpose of entering into a sole source  
28 contract to develop, own, and/or operate the cogeneration facility.  
29 The contract may also include provisions for the purchase of  
30 electricity or thermal energy from the cogeneration facility, the

1 acquisition of a fuel source, and any financial considerations which  
2 may accrue to the state from ownership and/or operation of the  
3 cogeneration facility by the local utility.

4 (b) The energy office may enter into contracts through competitive  
5 negotiation under this subsection for the development, ownership,  
6 and/or operation of a cogeneration facility. In determining an  
7 acceptable bid, the energy office and the state agency may consider  
8 such factors as technical knowledge, experience, management, staff, or  
9 schedule, as may be necessary to achieve economical construction or  
10 operation of the project. The selection of a developer or operator of  
11 a cogeneration facility shall be made in accordance with procedures for  
12 competitive bidding under chapter 43.19 RCW.

13 (c) The energy office shall comply with the requirements of chapter  
14 39.80 RCW when contracting for architectural or engineering services.

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

27 (b) It is the general intent of this chapter that cogeneration  
28 projects developed and owned by the state will be sized to the  
29 projected thermal energy load of the state facility over the useful  
30 life of the project. The principal purpose and use of such projects is

1 to supply thermal energy to a state facility and not primarily to  
2 develop generating capacity for the sale of electricity. For state-  
3 owned projects with electricity production in excess of projected  
4 thermal requirements, the energy office shall seek and obtain  
5 legislative appropriation and approval for development. Nothing in  
6 this act shall be construed to authorize any state agency to sell  
7 electricity or thermal energy on a retail basis.

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

19 (8) The state may develop and own a thermal energy distribution  
20 system associated with a cogeneration project for the principal purpose  
21 of distributing thermal energy at the state facility. If thermal  
22 energy is to be sold outside the state facility, the state may only  
23 sell the thermal energy to a utility.

24 NEW SECTION. **Sec. 9.** SALE OF COGENERATED ELECTRICITY AND STEAM.

25 It is the intention of this act that the state and its agencies are  
26 compensated fairly for the energy provided to utilities from  
27 cogeneration at state facilities. Such compensation may include  
28 revenues from sales of electricity or thermal energy to utilities,  
29 lease of state properties, and value of thermal energy provided to the

1 facility. It is also the intent of this act that the state and its  
2 agencies be accorded the opportunity to compete on a fair and  
3 reasonable basis to fulfill a utility's new resource acquisition needs  
4 when selling the energy produced from cogeneration projects at state  
5 facilities through energy purchase agreements.

6 (1)(a) The energy office and state agencies may participate in any  
7 utility request for resource proposal process, as either established  
8 under the rules and regulations of the utilities and transportation  
9 commission, or by the governing board of a public utility district,  
10 municipal utility, cooperative, or mutual.

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

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

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

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

24 (c) Before approving an energy purchase agreement, the energy  
25 office shall review the proposed agreement for its technical and  
26 economic feasibility, the degree of certainty of benefits, the degree  
27 of financial risk assumed by the state and/or the state agency, the  
28 benefits offered to the state and/or state agency, and other such  
29 factors as the energy office deems prudent. The energy office shall  
30 approve an energy purchase agreement unless it finds that such an

1 agreement would not result in an equitable allocation of costs and  
2 benefits, in which case the transaction shall be disapproved.

3 (3)(a) The state or state agency shall comply with and shall be  
4 bound by applicable avoided cost schedules, electric power wheeling  
5 charges, interconnection requirements, utility tariffs, and regulatory  
6 provisions to the same extent it would be required to comply and would  
7 be bound if it were a private citizen. The state shall neither seek  
8 regulatory advantage, nor change regulations, regulatory policy,  
9 process, or decisions to its advantage as a seller of cogenerated  
10 energy. Nothing contained in this act shall be construed to mandate or  
11 require public or private utilities to wheel electric energy resources  
12 within or beyond their service territories. Nothing in this act  
13 authorizes any state agency or school district to make any sale of  
14 energy or waste heat as defined by RCW 80.62.020(9) beyond the explicit  
15 provisions of this act. Nothing contained in this act requires a  
16 utility to purchase energy from the state or a state agency or enter  
17 into any agreement in connection with a cogeneration facility.

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

1 (4) Any party to an energy purchase agreement may, within thirty  
2 days of any decision made pursuant to subsection (2)(c) of this section  
3 to disapprove the agreement made pursuant to this section, request an  
4 independent reviewer who is mutually agreeable to all parties to review  
5 the decision. The parties shall within thirty days of selection submit  
6 to the independent reviewer documentation supporting their positions.  
7 The independent reviewer shall render advice regarding the validity of  
8 the disapproval within an additional thirty days.

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

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

16 (a) Contract to sell electric energy generated at state facilities  
17 to a utility; and

18 (b) Contract to sell thermal energy produced at state facilities to  
19 a utility.

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

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

26 (b) Lease state property for the installation and operation of  
27 cogeneration and facility heating and cooling equipment at its  
28 facilities;

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

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

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

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

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

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

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

20 (a) Construction of energy efficiency projects, including project  
21 evaluation and verification of benefits, project design, project  
22 development, project construction, and project administration.

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

26 (2) Sources for this account may include:

27 (a) General obligation and revenue bond proceeds appropriated by  
28 the legislature;

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

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

4 (3) The energy office shall establish criteria for approving energy  
5 efficiency projects to be financed from moneys disbursed from this  
6 account. The criteria shall include cost-effectiveness, reliability of  
7 energy systems, and environmental costs or benefits. The energy office  
8 shall ensure that the criteria are applied with professional standards  
9 for engineering and review.

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

11 The energy efficiency services account is created in the state  
12 treasury. Moneys in the account may be spent only after appropriation.  
13 Expenditures from the account may be used only (a) for the energy  
14 office to provide energy efficiency services to state agencies and  
15 school districts including review of life-cycle cost analyses and (b)  
16 for transfer by the legislature to the state general fund.

17 (2) All receipts from the following sources shall be deposited into  
18 the account:

19 (a) Project fees charged under this section and sections 3, 8, and  
20 16 of this act;

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

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

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

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

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

7 NEW SECTION. **Sec. 13.** PROJECT BENEFITS. (1) Potential  
8 benefits from energy efficiency projects at public facilities include  
9 savings in the form of reduced energy costs; revenues from lease  
10 payments, sales of energy or energy savings, or other sources; avoided  
11 capital costs; site enhancements; and additional operating and  
12 maintenance resources.

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

17 (a) As to conservation, state agencies may retain all net savings  
18 in the form of reduced energy costs, and one-half of all net revenues  
19 from any transaction with a utility, the bonneville power  
20 administration, or other entity. The net savings shall be retained by  
21 the local administrative body responsible for the public facility;

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

27 (c) The remaining net revenues from conservation projects, and  
28 remaining net savings and revenues from cogeneration projects, shall be

1 remitted to the state for the disposition and uses specified in  
2 subsection (4) of this section.

3 (3) Each state agency's share of net savings from cogeneration  
4 projects and of all net revenues shall be credited to a special local  
5 account created under section 18 of this act, the use of which shall be  
6 limited, in priority order, to ongoing operation, maintenance, and  
7 improvements of energy systems and energy efficiency measures, to other  
8 ongoing and deferred maintenance, and to other infrastructure  
9 improvements at the facility that was the site of the energy efficiency  
10 project.

11 (4) The state's share of net savings from cogeneration projects and  
12 of all net revenues, and any portion of the state agency's share which  
13 exceeds its needs for the purposes specified in subsection (3) of this  
14 section, shall be deposited in the energy efficiency services account  
15 established by section 12 of this act.

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

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

28 (7) For purposes of this section, "net" savings and revenues shall  
29 mean savings and revenues remaining after payment of project capital  
30 costs, including debt service, and other payments and reserves as

1 required by a bond resolution or loan agreement under this chapter, and  
2 payment of project operating and maintenance expenses. The energy  
3 office shall develop guidelines and procedures for determining net  
4 savings and net revenues for energy efficiency projects at public  
5 facilities by April 1, 1992.

6 (8) The energy office shall report annually until the year 2006 to  
7 the director of the office of financial management and the chairs of  
8 the senate ways and means committee and the appropriate house of  
9 representatives fiscal committees a full and complete financial  
10 accounting for energy efficiency projects undertaken pursuant to this  
11 act, including but not limited to a description of the project, its  
12 location and sponsoring agency or school district, date of completion  
13 or, if not completed, status of construction, the amount of investment  
14 in and expenditures on the project, the amount of revenues received  
15 from the project and estimated savings, if any, during the past year,  
16 estimated revenues, expenditures, and investments for the ensuing five  
17 years, the useful life originally estimated for the project, and the  
18 useful life of the project estimated to remain as of the date of the  
19 report, and the amount of savings and revenues from energy conservation  
20 and cogeneration retained by individual state agencies.

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

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

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

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

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

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

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

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

10 (7) "Life-cycle cost" means the initial cost and cost of operation  
11 of a major facility over its economic life. This shall be calculated  
12 as the initial cost plus the operation, maintenance, and energy costs  
13 over its economic life, reflecting anticipated increases in these costs  
14 discounted to present value at the current rate for borrowing public  
15 funds, as determined by the ~~((state finance committee))~~ office of  
16 financial management. The energy cost~~((s))~~ projections used shall be  
17 those ~~((projected))~~ provided by the state energy office. The office  
18 shall update ~~((the))~~ these projections ~~((of energy costs))~~ at least  
19 every two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (12) "Cogeneration" means the sequential generation of two or more  
28 forms of energy from a common fuel or energy source. Where these forms  
29 are electricity and thermal energy, then the operating and efficiency  
30 standards established by 18 C.F.R. Sec. 292.205 and the definitions

1 established by 18 C.F.R. 292.202 (c) through (m) as of the effective  
2 date of this act shall apply.

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

5 GUIDELINES FOR LIFE-CYCLE COST ANALYSIS. The office, in  
6 consultation with affected public agencies, shall develop and issue  
7 guidelines for administering this chapter. The purpose of the  
8 guidelines is to define a procedure and method for performance of  
9 life-cycle cost analysis to promote the selection of low-life-cycle  
10 cost alternatives. At a minimum, the guidelines must contain  
11 provisions that:

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

14 (2) Identify energy components and system alternatives including  
15 renewable energy systems and cogeneration applications prior to  
16 commencing the energy consumption analysis;

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

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

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

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

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

27 LIFE-CYCLE COST ANALYSIS REVIEW FEES. The energy office may  
28 impose fees upon affected public agencies for the review of life-cycle

1 cost analyses. The fees shall be deposited in the energy efficiency  
2 services account established in section 12 of this act. The purpose of  
3 the fees is to recover the costs by the office for review of the  
4 analyses. The office shall set fees at a level necessary to recover  
5 all of its costs related to increasing the energy efficiency of  
6 state-supported new construction. The fees shall not exceed one-tenth  
7 of one percent of the total cost of any project or exceed two thousand  
8 dollars for any project unless mutually agreed to. The office shall  
9 provide detailed calculation ensuring that the energy savings resulting  
10 from its review of life-cycle cost analysis justify the costs of  
11 performing that review.

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

15 NEW SECTION. **Sec. 18.** A new section is added to Title 28A RCW to  
16 read as follows:

17 The office of the superintendent of public instruction shall  
18 report annually to the energy and utilities committees of the house of  
19 representatives and the senate regarding the effects of this act on  
20 school districts throughout the state.

21 **Sec. 19.** RCW 43.88.195 and 1979 c 151 s 140 are each amended to  
22 read as follows:

23 After August 11, 1969, no state agency, state institution,  
24 state institution of higher education, which shall include all state  
25 universities, regional universities, The Evergreen State College, and  
26 community colleges, shall establish any new accounts or funds which are  
27 to be located outside of the state treasury: PROVIDED, That the office

1 of financial management shall be authorized to grant permission for the  
2 establishment of such an account or fund outside of the state treasury  
3 only when the requesting agency presents compelling reasons of economy  
4 and efficiency which could not be achieved by placing such funds in the  
5 state treasury. When the director of financial management authorizes  
6 the creation of such fund or account, ((he)) the director shall  
7 forthwith give written notice of the fact to the standing committees on  
8 ways and means of the house and senate: PROVIDED FURTHER, That the  
9 office of financial management may grant permission for the  
10 establishment of accounts outside of the state treasury for the  
11 purposes of section 13 of this act.

12 **Sec. 20.** 1989 1st ex.s. c 12 s 301 (uncodified) is amended to read  
13 as follows:

14 FOR THE WASHINGTON STATE ENERGY OFFICE

15 Energy conservation projects (90-4-001)

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

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

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

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

	Reappropriation	Appropriation
4 St Bldg Constr Acct		1,946,600
5 Prior Biennia	Future Biennia	Total
6	2,199,000	4,145,600

7 NEW SECTION. **Sec. 21.** CODIFICATION INSTRUCTIONS. Sections  
8 2 through 13 and 17 of this act shall constitute a new chapter in Title  
9 39 RCW.

10 NEW SECTION. **Sec. 22.** CAPTIONS NOT LAW. Captions as used in  
11 this act constitute no part of the law.

12 NEW SECTION. **Sec. 23.** REPEALER. 1982 c 159 s 6 (uncodified) is  
13 repealed.

14 NEW SECTION. **Sec. 24.** SEVERABILITY CLAUSE. If any provision of  
15 this act or its application to any person or circumstance is held  
16 invalid, the remainder of the act or the application of the provision  
17 to other persons or circumstances is not affected.