
SUBSTITUTE HOUSE BILL 2939

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Grant, Dunshee, Linville, Kessler, Upthegrove, Kilmer, Ericks, Hasegawa, P. Sullivan, Santos, Green, Springer, Conway, Simpson and Hudgins)

READ FIRST TIME 01/31/06.

1 AN ACT Relating to creation of the energy freedom program; amending
2 RCW 43.135.035 and 43.135.035; adding a new chapter to Title 43 RCW;
3 making appropriations; providing effective dates; and providing
4 expiration dates.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Washington's dependence on energy supplied from outside the
8 state and volatile energy markets makes our economy and citizens
9 vulnerable to unpredictable and high energy prices;

10 (2) Washington's dependence on petroleum-based fuels increases
11 energy costs for citizens and businesses;

12 (3) Experts tell us that the global oil shortage will only worsen,
13 making the three dollars per gallon gasoline of summer 2005 seem
14 affordable;

15 (4) Each year, citizens and businesses in Washington state spend
16 nine billion dollars on gasoline and diesel, with those funds drained
17 from the state economy;

18 (5) Diesel soot from diesel engines ranks as the highest toxic air

1 pollutant in Washington, leading to hundreds of premature deaths and
2 increasing rates of asthma and other lung-related diseases;

3 (6) The use of biodiesel results in significantly less air
4 pollution than traditional diesel fuels and can help our citizens and
5 businesses conserve energy;

6 (7) Improper disposal and treatment of organic waste from farms and
7 livestock operations can have a significant negative impact on water
8 quality;

9 (8) Washington has abundant supplies of organic wastes from farms
10 that can be used for energy production and abundant farmland where
11 crops could be grown to supplement or supplant petroleum-based fuels;

12 (9) Instead of leaving our economy at the mercy of global events,
13 and the policies of foreign nations, Washington state should adopt a
14 policy of energy independence;

15 (10) The energy freedom program is meant to lead Washington state
16 towards energy independence;

17 (11) Producing more energy here means cleaner, renewable energy
18 that includes, but is not limited to, biofuels, solar power, and wind
19 power;

20 (12) The biofuels industry is a new and developing industry now
21 limited by the availability of capital for construction of facilities
22 for converting farm and forest products into energy and fuels; and

23 (13) For biofuels to be economically viable in Washington, it will
24 be necessary to grow dedicated crops, construct crushers near farms,
25 and build refineries to create fuel.

26 Therefore, the legislature finds it is in the public interest to
27 reduce Washington's dependence on imported oil, expand renewable fuel
28 production and use in Washington, conserve energy, improve use of
29 renewable energy and energy efficiency measures, and promote
30 sustainable rural economic development by creating new jobs and
31 stimulating business and economic activity in local communities across
32 Washington.

33 To accomplish this, the energy freedom program is established to
34 stimulate strategic investment in facilities, infrastructure,
35 technologies, and research and development that will advance
36 Washington's move toward energy independence.

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

3 (1) "Board" means the energy freedom board.

4 (2) "Department" means the department of community, trade, and
5 economic development.

6 (3) "Political subdivision" means any port district, county, city,
7 town, special purpose district, and any other municipal corporations or
8 quasi-municipal corporations in the state.

9 NEW SECTION. **Sec. 3.** (1) The energy freedom board is created to
10 exercise the powers granted under this chapter.

11 (2) The board consists of thirteen members as follows:

12 (a) One member shall be the director of the department of
13 agriculture or the director's designated representative;

14 (b) One member shall be the director of the department of
15 community, trade, and economic development or the director's designated
16 representative from the department's energy policy division;

17 (c) Four of the members shall be appointed by the legislature: Two
18 members from the house of representatives committee that has
19 jurisdiction over energy issues, one from each of the two major
20 caucuses, to be appointed by the speaker of the house of
21 representatives; two members from the senate committee that has
22 jurisdiction over energy issues, one from each of the two major
23 caucuses, to be appointed by the president of the senate; and

24 (d) The following members appointed by the governor: One
25 recognized expert in renewable energy; one representative from
26 Washington State University; one Washington state grower; one producer
27 of alternative fuels; one public fleet manager; one public buildings
28 manager; and one sustainable society advocate.

29 (3) The members appointed under subsection (2)(c) and (d) of this
30 section must initially be appointed to terms as follows: Three members
31 for two-year terms, four members for three-year terms, and four members
32 for four-year terms which includes the chair. Thereafter, each
33 succeeding term is four years. Appointees may be reappointed to serve
34 more than one term.

35 (4) The governor must select the chair of the board. The members
36 of the board shall elect one of their members to serve as vice chair.

37 (5) The department must provide staff support to the board.

1 (6) Members of the board receive no compensation but shall be
2 reimbursed for travel expenses as provided in RCW 43.03.050 and
3 43.03.060.

4 NEW SECTION. **Sec. 4.** In addition to other applicable provisions
5 of law pertaining to conflicts of interest of public officials, no
6 board member, appointive or otherwise, may participate in any decision
7 on any board contract in which the board member has any interests,
8 direct or indirect, with any entity that would be the recipient of any
9 aid under this chapter.

10 NEW SECTION. **Sec. 5.** The board may:

11 (1) Accept from any federal agency loans or grants for the planning
12 or financing of any project and enter into agreements with such an
13 agency concerning the loans or grants;

14 (2) Accept any gifts, grants, or loan of funds, property, or
15 financial or other aid in any form from any other source on any terms
16 and conditions that are not in conflict with this chapter;

17 (3) Adopt rules under chapter 34.05 RCW as necessary to carry out
18 the purposes of this chapter; and

19 (4) Perform all acts and functions as necessary or convenient to
20 carry out the powers expressly granted or implied under this chapter.

21 NEW SECTION. **Sec. 6.** The board shall:

22 (1) Establish a competitive process to solicit proposals for and
23 prioritize project applications for potential funding;

24 (2) Adopt rules governing project eligibility and evaluation
25 criteria;

26 (3) Establish a peer review committee to include board members,
27 renewable energy specialists, energy conservation specialists,
28 scientists, and individuals with specific recognized expertise. The
29 peer review committee shall provide to the board an independent peer
30 review of all proposals submitted that are determined to be competitive
31 for a low-interest loan or grant award. The board shall review
32 findings of the peer review committee when making final loan and grant
33 allocation decisions;

34 (4) Develop the prioritized list through open and public meetings;

1 (5) Establish performance measures against which the program will
2 be evaluated;

3 (6) Aggressively seek federal and other grant moneys;

4 (7) Report annually to the appropriate standing committees of the
5 legislature on the implementation of this chapter. The report must
6 include, but is not limited to: Information on the number of
7 applications for financial assistance; the grant or loan amount awarded
8 each project; a description of each project; the status of each funded
9 project, including the agricultural and environmental benefits of each
10 project, as well as the progress made by each project in creating jobs
11 and moving towards energy independence; the documentation of nonstate
12 funds to be used for each project; and progress against performance
13 measures developed under this chapter. The first report must be
14 submitted by December 31, 2006, to committees in the house of
15 representatives and senate with jurisdiction over energy issues.

16 NEW SECTION. **Sec. 7.** (1) The board is authorized to make low-
17 interest loans and grants to political subdivisions of the state for
18 the purposes of assisting political subdivisions in financing the cost
19 of new and renewable energy and biofuel development projects and
20 activities. Political subdivisions applying for loans and grants shall
21 identify nonstate matching funds available for the project, and shall
22 specify deliverables to be achieved by proposed projects and
23 activities.

24 (2) Applications for loans and grants must be made in the form and
25 manner as the board may prescribe.

26 (3) The board may provide financial assistance for the following
27 types of projects and activities including, but not limited to:

28 (a) Research and development of new and renewable energy and
29 biofuel sources including but not limited to biomass and associated
30 biofuel gases;

31 (b) Renewable energy and biofuel development infrastructure and
32 facilities; and

33 (c) Research and development to develop markets for alternative
34 fuel byproducts.

35 (4) Applications must be prioritized based on the following
36 criteria:

1 (a) The extent to which the project will contribute to the
2 establishment of a viable bioenergy production capacity in Washington;

3 (b) The benefits to Washington's agricultural producers;

4 (c) The extent to which the project will help conserve energy and
5 reduce dependence on petroleum fuels and imported energy, either
6 directly or indirectly;

7 (d) The extent to which the project will reduce air and water
8 pollution, either directly or indirectly;

9 (e) The number and quality of jobs, as well as the economic
10 benefits, created by the project;

11 (f) The extent to which the investment shows a direct link to
12 commercialization either by indirectly supporting the commercialization
13 of bioenergy intellectual property into a commercialized project, or by
14 directly assisting in moving a commercially viable project into the
15 marketplace for use by Washington state citizens; and

16 (g) The extent to which private funds have been leveraged.

17 (5) Financial assistance awarded to political subdivisions is one
18 time only and may not be used for ongoing operational expenses.

19 (6) Before any financial assistance application is approved, the
20 political subdivision must demonstrate to the board that no other
21 timely source of funding is available to it at costs reasonably similar
22 to financing available from the board.

23 (7) A responsible official of the political subdivision must be
24 present during board deliberations and provide information that the
25 board requests.

26 (8) The board may defer loan repayment for up to twelve months or
27 until the projects start to receive revenue from operations, whichever
28 is sooner.

29 (9) Upon receiving financial assistance, a political subdivision
30 must enter into appropriate contracts with any industry partners that
31 may be involved in the use of the loan or grant funds.

32 NEW SECTION. **Sec. 8.** The energy freedom account is created in the
33 state treasury. All receipts from appropriations made to the account,
34 proceeds from other lawful sources, and loan payments of principal and
35 interest derived from loans made under this chapter must be deposited
36 into the account. Moneys in the account may be spent only after
37 appropriation. Expenditures from the account may be used only for

1 loans and grants to political subdivisions for renewable energy and
2 biofuel development projects and activities authorized under this
3 chapter. Not more than one percent of the available funds from the
4 energy freedom account may be used for administrative costs of the
5 program.

6 NEW SECTION. **Sec. 9.** Beginning July 1, 2006, for four fiscal
7 years through June 30, 2010, the state treasurer shall transfer the sum
8 of twenty-five million dollars each fiscal year from the general fund--
9 state to the energy freedom account established in section 8 of this
10 act, for a total of one hundred million dollars.

11 NEW SECTION. **Sec. 10.** Beginning July 1, 2006, and for four fiscal
12 years through June 30, 2010, the sum of twenty-five million dollars for
13 each fiscal year is appropriated from the energy freedom account to the
14 department of community, trade, and economic development for the
15 purposes of this act.

16 **Sec. 11.** RCW 43.135.035 and 2005 c 72 s 2 are each amended to read
17 as follows:

18 (1) After July 1, 1995, any action or combination of actions by the
19 legislature that raises state revenue or requires revenue-neutral tax
20 shifts may be taken only if approved by a two-thirds vote of each
21 house, and then only if state expenditures in any fiscal year,
22 including the new revenue, will not exceed the state expenditure limits
23 established under this chapter. However, for legislation enacted
24 between the effective date of this 2005 act and June 30, 2007, any
25 action or combination of actions by the legislature that raises state
26 revenue or requires revenue-neutral tax shifts may be taken with the
27 approval of a majority of members elected to each house, so long as
28 state expenditures in any fiscal year, including the new revenue, will
29 not exceed the state expenditure limits established under this chapter.

30 (2)(a) If the legislative action under subsection (1) of this
31 section will result in expenditures in excess of the state expenditure
32 limit, then the action of the legislature shall not take effect until
33 approved by a vote of the people at a November general election. The
34 state expenditure limit committee shall adjust the state expenditure
35 limit by the amount of additional revenue approved by the voters under

1 this section. This adjustment shall not exceed the amount of revenue
2 generated by the legislative action during the first full fiscal year
3 in which it is in effect. The state expenditure limit shall be
4 adjusted downward upon expiration or repeal of the legislative action.

5 (b) The ballot title for any vote of the people required under this
6 section shall be substantially as follows:

7 "Shall taxes be imposed on in order to allow a
8 spending increase above last year's authorized spending adjusted for
9 inflation and population increases?"

10 (3)(a) The state expenditure limit may be exceeded upon declaration
11 of an emergency for a period not to exceed twenty-four months by a law
12 approved by a two-thirds vote of each house of the legislature and
13 signed by the governor. The law shall set forth the nature of the
14 emergency, which is limited to natural disasters that require immediate
15 government action to alleviate human suffering and provide humanitarian
16 assistance. The state expenditure limit may be exceeded for no more
17 than twenty-four months following the declaration of the emergency and
18 only for the purposes contained in the emergency declaration.

19 (b) Additional taxes required for an emergency under this section
20 may be imposed only until thirty days following the next general
21 election, unless an extension is approved at that general election.
22 The additional taxes shall expire upon expiration of the declaration of
23 emergency. The legislature shall not impose additional taxes for
24 emergency purposes under this subsection unless funds in the education
25 construction fund have been exhausted.

26 (c) The state or any political subdivision of the state shall not
27 impose any tax on intangible property listed in RCW 84.36.070 as that
28 statute exists on January 1, 1993.

29 (4) If the cost of any state program or function is shifted from
30 the state general fund on or after January 1, 1993, to another source
31 of funding, or if moneys are transferred from the state general fund to
32 another fund or account, the state expenditure limit committee, acting
33 pursuant to RCW 43.135.025(5), shall lower the state expenditure limit
34 to reflect the shift. For the purposes of this section, a transfer of
35 money from the state general fund to another fund or account includes
36 any state legislative action taken that has the effect of reducing
37 revenues from a particular source, where such revenues would otherwise
38 be deposited into the state general fund, while increasing the revenues

1 from that particular source to another state or local government
2 account. This subsection does not apply to the dedication or use of
3 lottery revenues under RCW 67.70.240(3) or property taxes under RCW
4 84.52.068, in support of education or education expenditures. This
5 subsection does not apply to the transfer of general fund revenues
6 under section 10 of this act, in support of energy freedom or energy
7 freedom expenditures under chapter 43.-- RCW (sections 1 through 8 and
8 15 of this act).

9 (5) If the cost of any state program or function is shifted to the
10 state general fund on or after January 1, 2000, from another source of
11 funding, or if moneys are transferred to the state general fund from
12 another fund or account, the state expenditure limit committee, acting
13 pursuant to RCW 43.135.025(5), shall increase the state expenditure
14 limit to reflect the shift.

15 **Sec. 12.** RCW 43.135.035 and 2005 c 72 s 5 are each amended to read
16 as follows:

17 (1) After July 1, 1995, any action or combination of actions by the
18 legislature that raises state revenue or requires revenue-neutral tax
19 shifts may be taken only if approved by a two-thirds vote of each
20 house, and then only if state expenditures in any fiscal year,
21 including the new revenue, will not exceed the state expenditure limits
22 established under this chapter.

23 (2)(a) If the legislative action under subsection (1) of this
24 section will result in expenditures in excess of the state expenditure
25 limit, then the action of the legislature shall not take effect until
26 approved by a vote of the people at a November general election. The
27 state expenditure limit committee shall adjust the state expenditure
28 limit by the amount of additional revenue approved by the voters under
29 this section. This adjustment shall not exceed the amount of revenue
30 generated by the legislative action during the first full fiscal year
31 in which it is in effect. The state expenditure limit shall be
32 adjusted downward upon expiration or repeal of the legislative action.

33 (b) The ballot title for any vote of the people required under this
34 section shall be substantially as follows:

35 "Shall taxes be imposed on in order to allow a
36 spending increase above last year's authorized spending adjusted for
37 personal income growth?"

1 (3)(a) The state expenditure limit may be exceeded upon declaration
2 of an emergency for a period not to exceed twenty-four months by a law
3 approved by a two-thirds vote of each house of the legislature and
4 signed by the governor. The law shall set forth the nature of the
5 emergency, which is limited to natural disasters that require immediate
6 government action to alleviate human suffering and provide humanitarian
7 assistance. The state expenditure limit may be exceeded for no more
8 than twenty-four months following the declaration of the emergency and
9 only for the purposes contained in the emergency declaration.

10 (b) Additional taxes required for an emergency under this section
11 may be imposed only until thirty days following the next general
12 election, unless an extension is approved at that general election.
13 The additional taxes shall expire upon expiration of the declaration of
14 emergency. The legislature shall not impose additional taxes for
15 emergency purposes under this subsection unless funds in the education
16 construction fund have been exhausted.

17 (c) The state or any political subdivision of the state shall not
18 impose any tax on intangible property listed in RCW 84.36.070 as that
19 statute exists on January 1, 1993.

20 (4) If the cost of any state program or function is shifted from
21 the state general fund or a related fund to another source of funding,
22 or if moneys are transferred from the state general fund or a related
23 fund to another fund or account, the state expenditure limit committee,
24 acting pursuant to RCW 43.135.025(5), shall lower the state expenditure
25 limit to reflect the shift. For the purposes of this section, a
26 transfer of money from the state general fund or a related fund to
27 another fund or account includes any state legislative action taken
28 that has the effect of reducing revenues from a particular source,
29 where such revenues would otherwise be deposited into the state general
30 fund or a related fund, while increasing the revenues from that
31 particular source to another state or local government account. This
32 subsection does not apply to the dedication or use of lottery revenues
33 under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in
34 support of education or education expenditures. This subsection does
35 not apply to the transfer of general fund revenues under section 10 of
36 this act, in support of energy freedom or energy freedom expenditures
37 under chapter 43.-- RCW (sections 1 through 8 and 15 of this act).

1 (5) If the cost of any state program or function and the ongoing
2 revenue necessary to fund the program or function are shifted to the
3 state general fund or a related fund on or after January 1, 2007, the
4 state expenditure limit committee, acting pursuant to RCW
5 43.135.025(5), shall increase the state expenditure limit to reflect
6 the shift.

7 NEW SECTION. **Sec. 13.** (1) Sections 1 through 11 and 15 of this
8 act take effect July 1, 2006.

9 (2) Section 12 of this act takes effect July 1, 2007.

10 NEW SECTION. **Sec. 14.** Section 11 of this act expires July 1,
11 2007.

12 NEW SECTION. **Sec. 15.** Sections 1 through 10 and 12 of this act
13 expire June 30, 2016, unless reauthorized by the legislature. Any
14 moneys in the energy freedom account on that date and all payments
15 received after that date must be deposited in the state general fund.

16 NEW SECTION. **Sec. 16.** Sections 1 through 8 and 15 of this act
17 constitute a new chapter in Title 43 RCW.

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