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**ENGROSSED THIRD SUBSTITUTE HOUSE BILL 2939**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

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

READ FIRST TIME 2/7/.

1       AN ACT Relating to creation of the energy freedom program; amending  
2       RCW 82.16.020; adding a new chapter to Title 43 RCW; creating a new  
3       section; providing an effective date; and providing an expiration date.

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

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

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

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

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

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

17      (5) Diesel soot from diesel engines ranks as the highest toxic air  
18      pollutant in Washington, leading to hundreds of premature deaths and  
19      increasing rates of asthma and other lung-related diseases;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) Seven of the members shall be appointed by the governor: One  
22 recognized expert in renewable energy; one representative from  
23 Washington State University; one Washington state grower; one producer  
24 of alternative fuels; one public fleet manager; one public buildings  
25 manager; and one sustainable society advocate.

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

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

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

36 (6) Members of the board receive no compensation but shall be

1 reimbursed for travel expenses as provided in RCW 43.03.050 and  
2 43.03.060.

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

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

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

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

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

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

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

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

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

25 (3) Establish a peer review committee to include board members,  
26 renewable energy specialists, energy conservation specialists,  
27 scientists, and individuals with specific recognized expertise. The  
28 peer review committee shall provide to the board an independent peer  
29 review of all grant proposals submitted by Washington public research  
30 institutions for the purposes specified in section 7(3) (a) and (c) of  
31 this act that are determined to be competitive for a grant award. The  
32 board shall review the findings of the peer review committee when  
33 making final grant 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 to political subdivisions of the state for the purposes  
18 of assisting political subdivisions in financing the cost of new and  
19 renewable energy and biofuel development projects and activities. A  
20 grant may also be authorized for purposes designated in this chapter,  
21 but only when, and to the extent that, a loan is not reasonably  
22 possible, given the limited resources of the political subdivision and  
23 the finding by the board that financial circumstances require grant  
24 assistance to enable the project to move forward. Up to ten percent of  
25 all financial assistance provided to political subdivisions by the  
26 board may consist of grants. Political subdivisions applying for loans  
27 and grants shall identify nonstate matching funds available for the  
28 project, and shall specify deliverables to be achieved by proposed  
29 projects and activities, including evidence that the proposed project  
30 will result in a positive net energy output, if applicable.

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

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

35 (a) Research and development of new and renewable energy and  
36 biofuel sources including but not limited to biomass and associated  
37 biofuel gases;

1 (b) Renewable energy and biofuel development infrastructure and  
2 facilities;

3 (c) Research and development to develop markets for alternative  
4 fuel byproducts; and

5 (d) Loans for small commercial energy audits and retrofits.

6 (4) Applications must be prioritized based on the following  
7 criteria:

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

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

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

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

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

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

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

24 (5) The board may approve an application that results in loans of  
25 up to five million dollars. In no circumstances shall a loan approved  
26 under this section constitute more than fifty percent of total project  
27 funding.

28 (6) Financial assistance awarded to political subdivisions is one  
29 time only and may not be used for ongoing operational expenses.

30 (7) Before any financial assistance application is approved, the  
31 political subdivision must demonstrate to the board that no other  
32 timely source of funding is available to it at costs reasonably similar  
33 to financing available from the board.

34 (8) A responsible official of the political subdivision must be  
35 present during board deliberations and provide information that the  
36 board requests.

37 (9) The board may not approve an application if it fails to provide

1 for adequate reporting or disclosure of financial and employment data  
2 to the board. The board may require an annual or other periodic audit  
3 of the project books.

4 (10) The board may defer loan repayment for up to twenty-four  
5 months or until the projects start to receive revenue from operations,  
6 whichever is sooner.

7 (11) Upon receiving financial assistance, a political subdivision  
8 must enter into appropriate contracts with any industry partners that  
9 may be involved in the use of the facilities, infrastructure, or  
10 equipment.

11 (12) Upon written notice to the political subdivision, the board  
12 may suspend or cancel its loans or grants if any of the following  
13 occur:

14 (a) The political subdivision fails to make satisfactory and  
15 reasonable progress to complete the project, or the board concludes the  
16 political subdivision will be unable to complete the project or any  
17 portion of it; or

18 (b) The political subdivision or industry partners have made  
19 misrepresentations in any information furnished to the board in  
20 connection with the project.

21 (13) In the event that any portion of the loan or grant has been  
22 paid to the political subdivision under this section at the time of  
23 breach, or failure of the political subdivision to satisfactorily  
24 perform, the board may require that the full amount of the loan or  
25 grant, or a portion thereof, be repaid within a period specified by the  
26 board.

27 (14) The board is authorized to award grants to Washington public  
28 research institutions for the purposes specified in subsection (3)(a)  
29 and (c) of this section.

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

1 biofuel development projects and activities authorized under this  
2 chapter.

3 NEW SECTION. **Sec. 9.** In accordance with Article VIII, sections 5  
4 and 7 of the state Constitution, the credit of the state and counties,  
5 cities, towns, and other municipal corporations shall not in any manner  
6 be given or loaned to any individual, association, company, or  
7 corporation in the administration of the grant and loan program  
8 established in this chapter.

9 **Sec. 10.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read  
10 as follows:

11 (1) There is levied and there shall be collected from every person  
12 a tax for the act or privilege of engaging within this state in any one  
13 or more of the businesses herein mentioned. The tax shall be equal to  
14 the gross income of the business, multiplied by the rate set out after  
15 the business, as follows:

16 (a) Express, sewerage collection, and telegraph businesses: Three  
17 and six-tenths percent;

18 (b) Light and power business: Three and sixty-two one-hundredths  
19 percent;

20 (c) Gas distribution business: Three and six-tenths percent;

21 (d) Urban transportation business: Six-tenths of one percent;

22 (e) Vessels under sixty-five feet in length, except tugboats,  
23 operating upon the waters within the state: Six-tenths of one percent;

24 (f) Motor transportation, railroad, railroad car, and tugboat  
25 businesses, and all public service businesses other than ones mentioned  
26 above: One and eight-tenths of one percent;

27 (g) Water distribution business: Four and seven-tenths percent.

28 (2) An additional tax is imposed equal to the rate specified in RCW  
29 82.02.030 multiplied by the tax payable under subsection (1) of this  
30 section.

31 (3) Twenty percent of the moneys collected under subsection (1) of  
32 this section on water distribution businesses and sixty percent of the  
33 moneys collected under subsection (1) of this section on sewerage  
34 collection businesses shall be deposited in the public works assistance  
35 account created in RCW 43.155.050.



1       (4) Of amounts deposited into the general fund pursuant to  
2 subsection (1) of this section, the legislature may authorize a  
3 transfer of up to twenty-five million dollars for the fiscal year  
4 ending June 30, 2006, into the energy freedom account created in  
5 section 8 of this act.

6       NEW SECTION. Sec. 11. This act takes effect July 1, 2006.

7       NEW SECTION. Sec. 12. This act expires June 30, 2016.

8       NEW SECTION. Sec. 13. Any moneys in the energy freedom account on  
9 June 30, 2016, and all payments received after that date must be  
10 deposited in the state general fund.

11       NEW SECTION. Sec. 14. Sections 1 through 9 and 13 of this act  
12 constitute a new chapter in Title 43 RCW.

13       NEW SECTION. Sec. 15. If a transfer from the general fund to the  
14 energy freedom account created in section 8 of this act for the  
15 purposes of this act, referencing this act by bill or chapter number,  
16 is not provided by June 30, 2006, in the omnibus appropriations act,  
17 this act is null and void.

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