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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) Develop the prioritized list through open and public meetings;

26 (4) Establish performance measures against which the program will  
27 be evaluated;

28 (5) Aggressively seek federal and other grant moneys;

29 (6) Report annually to the appropriate standing committees of the  
30 legislature on the implementation of this chapter. The report must  
31 include, but is not limited to: Information on the number of  
32 applications for financial assistance; the grant or loan amount awarded  
33 each project; a description of each project; the status of each funded  
34 project, including the agricultural and environmental benefits of each  
35 project, as well as the progress made by each project in creating jobs

1 and moving towards energy independence; the documentation of nonstate  
2 funds to be used for each project; and progress against performance  
3 measures developed under this chapter. The first report must be  
4 submitted by December 31, 2006, to committees in the house of  
5 representatives and senate with jurisdiction over energy issues.

6 NEW SECTION. **Sec. 7.** (1) The board is authorized to make low-  
7 interest loans to political subdivisions of the state for the purposes  
8 of assisting political subdivisions in financing the cost of new and  
9 renewable energy and biofuel development projects and activities. A  
10 grant may also be authorized for purposes designated in this chapter,  
11 but only when, and to the extent that, a loan is not reasonably  
12 possible, given the limited resources of the political subdivision and  
13 the finding by the board that financial circumstances require grant  
14 assistance to enable the project to move forward. Up to ten percent of  
15 all financial assistance provided to political subdivisions by the  
16 board may consist of grants. Political subdivisions applying for loans  
17 and grants shall identify nonstate matching funds available for the  
18 project, and shall specify deliverables to be achieved by proposed  
19 projects and activities, including evidence that the proposed project  
20 will result in a positive net energy output, if applicable.

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

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

25 (a) Research and development of new and renewable energy and  
26 biofuel sources including but not limited to biomass and associated  
27 biofuel gases;

28 (b) Renewable energy and biofuel development infrastructure and  
29 facilities;

30 (c) Research and development to develop markets for alternative  
31 fuel byproducts; and

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

33 (4) Applications must be prioritized based on the following  
34 criteria:

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

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

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

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

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

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

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

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

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

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

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

27 (9) The board may not approve an application if it fails to provide  
28 for adequate reporting or disclosure of financial and employment data  
29 to the board. The board may require an annual or other periodic audit  
30 of the project books.

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

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

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

4 (a) The political subdivision fails to make satisfactory and  
5 reasonable progress to complete the project, or the board concludes the  
6 political subdivision will be unable to complete the project or any  
7 portion of it; or

8 (b) The political subdivision or industry partners have made  
9 misrepresentations in any information furnished to the board in  
10 connection with the project.

11 (13) In the event that any portion of the loan or grant has been  
12 paid to the political subdivision under this section at the time of  
13 breach, or failure of the political subdivision to satisfactorily  
14 perform, the board may require that the full amount of the loan or  
15 grant, or a portion thereof, be repaid within a period specified by the  
16 board.

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

20 NEW SECTION. **Sec. 8.** The energy freedom account is created in the  
21 state treasury. All receipts from appropriations made to the account,  
22 proceeds from other lawful sources, and loan payments of principal and  
23 interest derived from loans made under this chapter must be deposited  
24 into the account. Moneys in the account may be spent only after  
25 appropriation. Expenditures from the account may be used only for  
26 loans and grants to political subdivisions for renewable energy and  
27 biofuel development projects and activities authorized under this  
28 chapter.

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

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

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

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

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

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

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

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

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

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

20       (2) An additional tax is imposed equal to the rate specified in RCW  
21 82.02.030 multiplied by the tax payable under subsection (1) of this  
22 section.

23       (3) Twenty percent of the moneys collected under subsection (1) of  
24 this section on water distribution businesses and sixty percent of the  
25 moneys collected under subsection (1) of this section on sewerage  
26 collection businesses shall be deposited in the public works assistance  
27 account created in RCW 43.155.050.

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

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

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



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

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

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

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