
HOUSE BILL 3304

State of Washington 59th Legislature 2006 Regular Session

By Representatives Grant, Linville, Pettigrew, P. Sullivan, Kessler, Clibborn, Wallace, McCoy, Kilmer, Sells, Green and Morrell

Read first time 02/06/2006. Referred to Committee on Capital Budget.

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. It is the intent of the
37 legislature to appropriate funds for this strategic investment in the

1 fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009, and
2 June 30, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) Adopt rules governing project eligibility and evaluation
28 criteria;

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

1 findings of the peer review committee when making final loan and grant
2 allocation decisions;

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

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

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

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

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

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

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

32 (a) Renewable energy and biofuel development infrastructure,
33 facilities, and capital equipment including oilseed crushers; and

34 (b) Research and development of: (i) New and renewable energy and
35 biofuel sources including but not limited to biomass and associated
36 biofuel gases; and (ii) markets for alternative fuel byproducts.

1 (4) Applications must be prioritized based on the following
2 criteria:

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

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

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

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

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

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

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

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

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

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

28 (8) The board may defer loan repayment for up to twenty-four months
29 or until the projects start to receive revenue from operations,
30 whichever is sooner.

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

34 (10) Upon written notice to the political subdivision, the board
35 may suspend or cancel its loans or grants if any of the following
36 occur:

37 (a) The political subdivision fails to make satisfactory and

1 reasonable progress to complete the project, or the board concludes the
2 political subdivision will be unable to complete the project or any
3 portion of it; or

4 (b) The political subdivision or industry partners have made
5 misrepresentations in any information furnished to the board in
6 connection with the project.

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

13 NEW SECTION. **Sec. 8.** The energy freedom account is created in the
14 state treasury. All receipts from appropriations made to the account,
15 proceeds from other lawful sources, and loan payments of principal and
16 interest derived from loans made under this chapter must be deposited
17 into the account. Moneys in the account may be spent only after
18 appropriation. Expenditures from the account may be used only for
19 loans and grants to political subdivisions for renewable energy and
20 biofuel development projects and activities authorized under this
21 chapter. Not more than one percent of the available funds from the
22 energy freedom account may be used for administrative costs of the
23 program.

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

29 NEW SECTION. **Sec. 10.** The sum of twenty-five million dollars, or
30 as much thereof as may be necessary, is appropriated for the biennium
31 ending June 30, 2007, from the energy freedom account to the department
32 of community, trade, and economic development for the purposes of this
33 act.

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

3 (1) After July 1, 1995, any action or combination of actions by the
4 legislature that raises state revenue or requires revenue-neutral tax
5 shifts may be taken only if approved by a two-thirds vote of each
6 house, and then only if state expenditures in any fiscal year,
7 including the new revenue, will not exceed the state expenditure limits
8 established under this chapter. However, for legislation enacted
9 between the effective date of this 2005 act and June 30, 2007, any
10 action or combination of actions by the legislature that raises state
11 revenue or requires revenue-neutral tax shifts may be taken with the
12 approval of a majority of members elected to each house, so long as
13 state expenditures in any fiscal year, including the new revenue, will
14 not exceed the state expenditure limits established under this chapter.

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

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

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

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

1 (b) Additional taxes required for an emergency under this section
2 may be imposed only until thirty days following the next general
3 election, unless an extension is approved at that general election.
4 The additional taxes shall expire upon expiration of the declaration of
5 emergency. The legislature shall not impose additional taxes for
6 emergency purposes under this subsection unless funds in the education
7 construction fund have been exhausted.

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

11 (4) If the cost of any state program or function is shifted from
12 the state general fund on or after January 1, 1993, to another source
13 of funding, or if moneys are transferred from the state general fund to
14 another fund or account, the state expenditure limit committee, acting
15 pursuant to RCW 43.135.025(5), shall lower the state expenditure limit
16 to reflect the shift. For the purposes of this section, a transfer of
17 money from the state general fund to another fund or account includes
18 any state legislative action taken that has the effect of reducing
19 revenues from a particular source, where such revenues would otherwise
20 be deposited into the state general fund, while increasing the revenues
21 from that particular source to another state or local government
22 account. This subsection does not apply to the dedication or use of
23 lottery revenues under RCW 67.70.240(3) or property taxes under RCW
24 84.52.068, in support of education or education expenditures. This
25 subsection does not apply to the transfer of general fund revenues
26 under section 10 of this act, in support of energy freedom or energy
27 freedom expenditures under chapter 43.-- RCW (sections 1 through 8 and
28 15 of this act).

29 (5) If the cost of any state program or function is shifted to the
30 state general fund on or after January 1, 2000, from another source of
31 funding, or if moneys are transferred to the state general fund from
32 another fund or account, the state expenditure limit committee, acting
33 pursuant to RCW 43.135.025(5), shall increase the state expenditure
34 limit to reflect the shift.

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

37 (1) After July 1, 1995, any action or combination of actions by the

1 legislature that raises state revenue or requires revenue-neutral tax
2 shifts may be taken only if approved by a two-thirds vote of each
3 house, and then only if state expenditures in any fiscal year,
4 including the new revenue, will not exceed the state expenditure limits
5 established under this chapter.

6 (2)(a) If the legislative action under subsection (1) of this
7 section will result in expenditures in excess of the state expenditure
8 limit, then the action of the legislature shall not take effect until
9 approved by a vote of the people at a November general election. The
10 state expenditure limit committee shall adjust the state expenditure
11 limit by the amount of additional revenue approved by the voters under
12 this section. This adjustment shall not exceed the amount of revenue
13 generated by the legislative action during the first full fiscal year
14 in which it is in effect. The state expenditure limit shall be
15 adjusted downward upon expiration or repeal of the legislative action.

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

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

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

30 (b) Additional taxes required for an emergency under this section
31 may be imposed only until thirty days following the next general
32 election, unless an extension is approved at that general election.
33 The additional taxes shall expire upon expiration of the declaration of
34 emergency. The legislature shall not impose additional taxes for
35 emergency purposes under this subsection unless funds in the education
36 construction fund have been exhausted.

37 (c) The state or any political subdivision of the state shall not

1 impose any tax on intangible property listed in RCW 84.36.070 as that
2 statute exists on January 1, 1993.

3 (4) If the cost of any state program or function is shifted from
4 the state general fund or a related fund to another source of funding,
5 or if moneys are transferred from the state general fund or a related
6 fund to another fund or account, the state expenditure limit committee,
7 acting pursuant to RCW 43.135.025(5), shall lower the state expenditure
8 limit to reflect the shift. For the purposes of this section, a
9 transfer of money from the state general fund or a related fund to
10 another fund or account includes any state legislative action taken
11 that has the effect of reducing revenues from a particular source,
12 where such revenues would otherwise be deposited into the state general
13 fund or a related fund, while increasing the revenues from that
14 particular source to another state or local government account. This
15 subsection does not apply to the dedication or use of lottery revenues
16 under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in
17 support of education or education expenditures. This subsection does
18 not apply to the transfer of general fund revenues under section 10 of
19 this act, in support of energy freedom or energy freedom expenditures
20 under chapter 43.-- RCW (sections 1 through 8 and 15 of this act).

21 (5) If the cost of any state program or function and the ongoing
22 revenue necessary to fund the program or function are shifted to the
23 state general fund or a related fund on or after January 1, 2007, the
24 state expenditure limit committee, acting pursuant to RCW
25 43.135.025(5), shall increase the state expenditure limit to reflect
26 the shift.

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

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

30 NEW SECTION. Sec. 14. Section 11 of this act expires July 1,
31 2007.

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

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

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