

# HOUSE BILL REPORT

## HB 1035

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**As Reported by House Committee On:**  
Technology, Energy & Communications  
Appropriations

**Title:** An act relating to anaerobic digestion power.

**Brief Description:** Addressing the purchase of anaerobic digestion power.

**Sponsors:** Representatives Morris, Hudgins, Eickmeyer, Linville and B. Sullivan.

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 1/17/07, 2/20/07 [DPS];  
Appropriations: 3/1/07, 3/3/07 [DP2S(w/o sub TEC)].

**Brief Summary of Second Substitute Bill**

- Establishes a Clean Streams Grant Program within the Department of Community, Trade and Economic Development (DCTED).
- Authorizes the DCTED to award grants to anaerobic digester power producers.
- Establishes the Clean Streams and Clear Sky Subaccount in the Energy Freedom Account.

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hudgins, Hurst, Takko and VanDeWege.

**Staff:** Kara Durbin (786-7133).

**Background:**

Anaerobic Digestion

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Anaerobic digestion is the bacterial breakdown of organic materials in the absence of oxygen. This biological process produces biogas, which is principally composed of methane and carbon dioxide. Biogas is typically produced from feedstocks such as sewage sludge, livestock manure, and wet organic materials. Anaerobic digesters are devices that use the natural process of anaerobic digestion to treat waste, produce energy, or both.

#### Energy Freedom Program

In 2006, the Legislature created the \$17 million Energy Freedom Program within the Department of Agriculture. The purpose of the Energy Freedom Program is to support projects that convert agricultural waste into energy. Five alternative energy projects (totaling \$10.25 million) were earmarked by the Legislature as part of the 2006 Supplemental Capital Budget. The remaining funds (\$6.75 million) were allocated according to a competitive loan process. Six projects were selected. Four loans were awarded to support oilseed processing for biodiesel, and the remaining two loans were awarded to support anaerobic digestion.

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### **Summary of Substitute Bill:**

#### Clean Streams Program

A Clean Streams Grant Program (Program) is established within the Department of Community, Trade and Economic Development (DCTED). The purpose of the Program is to award grants to anaerobic digester power producers that seek assistance to pay for the capital costs associated with the project.

#### Eligibility Process

In order to be eligible for a grant award under the Program, a person or entity in the process of developing an anaerobic digester project in the state must, prior to completion of the project, submit a call for subscriptions seeking a power purchase agreement offer from another electric utility to purchase power from the anaerobic digester project.

Once a power purchase agreement offer has been made by a potential purchaser, the power producer must ask their local electric utility for transmission access to wheel the power from the generation site to the potential purchaser that submitted the highest bid, if the highest bid was not made by the local electric utility. If an agreement regarding transmission access cannot be reached, the power producer may send a written purchase request to the local electric utility, requesting that the utility purchase the output of the anaerobic digester project at the utility's avoided cost as required under federal law that obligates the utility to purchase power from a qualifying facility at the utility's avoided cost rate.

After a power producer has secured a power purchase agreement offer from a potential purchaser and has secured transmission access for the power, the power producer may apply for a Clean Streams Grant. To apply, the power producer must submit: (1) the power purchase agreement offer between the power producer and the purchaser, including the estimated revenue over the life of the contract; and (2) a detailed analysis of the initial capital investment cost of the anaerobic digester project.

### Criteria for Awarding Grants

A power producer must meet the following criteria, at a minimum, in order to participate in the grant program:

- the power producer is carrying original debt on the initial capital investment in the anaerobic digester project that has not been satisfied by other federal, state, or private funding sources;
- the power producer has secured a power purchase agreement offer from a potential purchaser of the electricity; and
- the power producer was unable to secure sufficient revenue from a potential purchaser to recover the initial capital investment over the length of the power purchase agreement offer.

Any grant award determined by the DCTED must supply the power producer with no more than the power producer's cost to finance the initial capital investment during the period of the power purchase agreement, minus the revenue to be generated by the power purchase agreement offer between the power producer and the potential purchaser, and minus any federal, state, or private funding received for the anaerobic digester project.

Grant awards must be based upon the annual electricity output of the anaerobic digester project. The grant award must be reviewed annually. Upon review, the grant award may be adjusted to reflect actual power produced for the previous year as compared to the projected amount of power used to calculate the amount of the original grant award.

The DCTED is authorized to adopt rules as necessary to implement the grant program. If appropriations made to the DCTED are insufficient to cover all anaerobic digestion projects applying for a grant, the DCTED may prioritize and prorate grant awards as necessary.

### Clean Streams and Clear Sky Subaccount

The Clean Streams and Clear Sky Subaccount is created as a subaccount of the Energy Freedom Account. All receipts from appropriations made to the Clean Streams and Clear Sky Subaccount must be deposited into the subaccount. Expenditures from the subaccount may only be used for projects and activities authorized by the Clear Sky program and the Clean Streams program.

### **Substitute Bill Compared to Original Bill:**

The substitute bill strikes the provisions of the underlying bill.

The substitute bill establishes a Clean Streams Grant Program within the Department of Community, Trade, and Economic Development (DCTED) to assist anaerobic digester power producers in bringing down the cost of their initial capital investment.

The substitute bill requires that an anaerobic digester power producer must submit a call for subscriptions prior to completion of the project in order to be eligible to apply for a grant.

The substitute bill requires the power producer to ask for transmission access from their local electric utility to wheel the power. If an agreement regarding transmission cannot be reached,

the power producer may send a power purchase request to the local electric utility, requesting that the utility purchase their output at the utility's avoided cost as required under federal law.

The substitute bill allows the power producer to apply for a Clean Streams grant to make up the difference between the capital investment made in the anaerobic digester project and the revenue generated from the power purchase agreement offer (PPAO), minus any other state, federal, or private funding received for the project.

The substitute bill creates the Clean Streams and Clear Sky Subaccount to the Energy Freedom Account.

The substitute bill contains an appropriation clause for \$3 million from the General Fund to the DCTED to carry out the Clean Streams Grant Program.

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**Appropriation:** The sum of \$3 million is appropriated for the fiscal year ending June 30, 2008, from the General Fund to the Department of Community, Trade and Economic Development.

**Fiscal Note:** Available. Fiscal note requested on substitute bill February 20, 2007.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) These are the types of resources we want to encourage in our state. Often the local utility isn't willing to pay the true market rate for this type of power and thus the power is left stranded. Requiring a state agency to pay the green tag rate might be a way to make sure these types of resources get utilized.

This type of program is essential for investment by the farm community. These types of projects help stabilize the income of farmers, reduce air pollution, and reduce odors and methane. They help keep our communities clean. This bill helps reduce global warming by utilizing renewable energy and it also reduces methane.

The high investment cost of anaerobic digester projects make the viability of such projects very challenging. This is a sound technology that we should encourage in our state. These projects are very important to farmers. This provides a stable market for farmers to operate a digester. They help sustain the agricultural economy of our state. No dairy farm can survive with one of these projects without receiving assistance for the high capital costs.

(With concerns) Demand for these projects will grow in the future regardless. The retail rate would vary utility by utility. We are concerned about whether the utility can recover its administrative costs under this bill, including interconnection costs. We suggest the reference to service territories be deleted since our state does not have service territories.

(Opposed) We recently hooked up a large anaerobic digester project in the Yakima Valley area. These types of projects can be implemented without this bill. We support the objective of this bill – to encourage development of these types of projects. If the transaction is between the state and the producer, then we don't have as many concerns.

Projects of this size fall under the Public Utility Regulatory Policy Act (PURPA). Under the PURPA, utilities are obligated to buy at a state-set avoided cost, not the retail rate. We see this as a conflict with federal law. We think we would have to submit a tariff for the wheeling charges. This may cause us operational difficulties in terms of scheduling of power. If we need to wheel across our system under this bill, the state cannot compel us to do this because wheeling is under the Federal Energy Regulatory Commission jurisdiction. Property tax exemptions or carbon credits for these projects might be a better option.

**Persons Testifying:** (In support) Representative Morris, prime sponsor; Dave Reiner, Qualco Energy; Carolyn Henri, Stanwood Bioenergy Producers; Joe Harrison, Washington State University; Andy Werkhoven, Werkhoven Dairy, Inc.; Jack Field, Washington Cattleman's Association; and John Roney, Snohomish County Executive's Office.

(With concerns) Ken Johnson, Puget Sound Energy; Dave Warren, Washington Public Utility Districts; Dave Arbaugh, Snohomish Public Utility District; and Miguel Perez-Gibson, Northwest Energy Coalition.

(Opposed) Kathleen Collins, PacifiCorp; and Collins Sprague, Avista Corp.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 33 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Buri, Chandler, Cody, Conway, Darneille, Dunn, Ericks, Fromhold, Grant, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Anderson.

**Staff:** Owen Rowe (786-7391).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Technology, Energy & Communications:**

The second substitute bill removed the appropriation and added a null and void clause, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on substitute bill on February 20, 2007.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

**Staff Summary of Public Testimony:**

(In support) None.

(Opposed) None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.