

SENATE BILL REPORT

SB 6656

As of February 2, 2010

Title: An act relating to implementing energy conservation programs.

Brief Description: Authorizing a local financing tool to fund energy efficiency upgrades and removing financial barriers to implementing energy conservation programs.

Sponsors: Senators Murray, Rockefeller, Fraser and Shin.

Brief History:

Committee Activity: Environment, Water & Energy: 1/26/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: Municipal Utilities. Municipal utilities in Washington are authorized to provide residents with gas, electricity, water, and other services that are charged by rates or fixed prices. A municipality that intends to acquire or construct a public utility must generally submit the matter for a public vote.

Gifts of Public Funds. The state Constitution prohibits the gift or loan of public money by state or local governments. An exception was adopted in 1979 (Amendment 70) authorizing local governments engaged in the sale or distribution of energy to use operating revenues from such sales to finance conservation and energy efficiency measures for their residential customers. Financing must be repaid by a charge back and secured by a lien against the benefited property. Utility financing cannot be used for the conversion from one energy source to another. Subsequent constitutional amendments have expanded the exception to allow energy conservation financing for all structures and to allow conservation financing for water (Amendment 86) and stormwater or sewer services (Amendment 91).

Implementing Amendment 70 (Energy Conservation). The statutes implementing Amendment 70 for municipal utilities or public utility districts set forth various criteria for financing energy conservation, including a requirement that the cost per unit of energy saved or produced by the use of conservation and energy efficiency be less than the cost per unit of energy produced by the next least costly new energy resource that can be acquired to meet future demand. The implementing statutes also state that financing used to install certain on-

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site distributed energy systems using renewable fuel do not convert one energy source to another so long as one commercial energy supplier is not substituted for another.

Implementing Amendment 86 (Water Conservation). The statute implementing Amendment 86 for counties engaged in the sale or distribution of water sets forth various criteria for financing water conservation, including a requirement that the cost per unit of water saved or conserved is less than the cost per unit of water supplied by the next least costly new water source available to meet future demand.

Greenhouse Gas Mitigation. In January 2007 the Washington Supreme Court held a municipal utility's efforts to mitigate the effects of its greenhouse gas emissions was not a proper utility function but a general governmental purpose that must be borne by taxpayers and not utility ratepayers. Four months later, the Legislature responded by expressly authorizing municipal utilities, counties, and public utility districts to engage in greenhouse gases mitigation activities as part of their utility functions.

Local Improvement Districts (LIDs). State law authorizes municipal corporations to form LIDs and to require properties specially benefited by those improvements to help cover the costs through assessments. LID assessments must be based on the special benefits that properties acquire as a result of improvements to the area. LID assessments in excess of special benefits received are prohibited and result in a taking.

Washington Utilities and Transportation Commission (WUTC) and Conservation Investments. In 1990 the Legislature required the WUTC to adopt a policy allowing a 2 percent incentive return for conservation investments supporting new energy code requirements or energy efficiency programs for senior citizens or low-income customers. The legislature also required the WUTC to adopt other policies to encourage conservation.

Summary of Bill: Authorizing Municipalities to Provide Energy Conservation Services. Municipalities may provide energy conservation services by creating an independent energy conservation services utility or through an existing municipal utility. Energy conservation services means measures to reduce on-site energy consumption such as energy audits, weatherization services, and financing the acquisition and installation of distributed electricity generation systems.

No public vote is required for creating an energy conservation services utility; however, before offering energy conservation services, the legislative authority of a municipality must make the following determinations following a public hearing: (1) the services are additional or complementary; (2) the services target underserved populations; or (3) the services add incremental value to preexisting conservation programs offered by electric or natural gas utilities. Municipalities providing energy conservation services must coordinate with existing conservation programs and services offered by the electric or natural gas utility serving that municipality.

The legislative authority of a municipality offering energy conservation services is authorized to set uniform rates or charges and may issue general obligation, revenue bonds, or notes to finance the services. A municipality may also form a LID to provide energy conservation services.

Modifying Conservation Loan Requirements for Municipal Utilities, Public Utility Districts, and County Water Utilities. Several statutes implementing Amendments 70 and 86 are modified to include loans for energy conservation services. The following entities may issue loans for energy conservation services: (1) municipal utilities or public utility districts engaged in the generation, sale, or distribution of energy; (2) counties engaged in the sale and distribution of water; and (3) municipal conservation services utilities.

The aggregate amount of conservation loans and the repayment terms must be approved by the respective legislative authorities and established by ordinance. The loans must be secured by a statutory lien on the benefited property, not to exceed 5 percent of the current assessed value of the property. The statutory lien is paramount and superior to any other lien or encumbrance except a lien for general taxes and special assessment district assessments. Revenues from loan payments may be pledged to secure and repay any general obligation or revenue bonds.

In addition to energy conservation services loans, grants may be provided to the poor or infirm for energy conservation improvements in existing occupied structures.

Allowing Municipalities and Counties to Mitigate GHG Emissions. A municipality or county may develop a plan to reduce its greenhouse gas emissions, or achieve no-net emissions, from municipal or county governmental activities. The activities may include the operation of any facilities, equipment, fleet of vehicles, or other systems that it owns, operates, leases, or uses. The municipality or county may enter into a mitigation agreement with the local provider of electric or natural gas utility services.

Requiring the WUTC to Approve a Rate Adjustment for Conservation Savings. Upon request by an investor-owned electrical or gas company, the WUTC must approve a rate adjustment up to 3 percent a year to: (1) provide recovery of all prudently incurred, cost-effective expenditures for conservation; and (2) ensure recovery of authorized nonfuel revenue requirements that a utility would have recovered absent conservation savings.

This rate adjustment does not apply to any rate for retail wheeling service, high voltage service, or large general service greater than three average megawatts, or to commercial or industrial gas service or gas transportation service greater than 500,000 therms per year.

Provisions relating to the WUTC and the adoption of policies to provide financial incentives for energy efficiency are removed from state law.

The term conservation savings includes: (1) savings from electrical or gas company programs and company-sponsored programs; (2) rebate-based programs and education-based programs; (3) conservation due to changes in federal, state, or local building energy codes and equipment standards.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill advances last session's Energy First agenda, which passed without the efficiency financing provisions for local governments. Washington has two excellent legs of a three-legged energy efficiency stool: building codes standards, and utility standards. The third leg is weak, which is private and local government access to energy efficiency financing. Attorneys are confident the bill's financing provisions are not an unconstitutional gift of public funds under the state constitution. Local government financing will only cause rates to increase by 10 cents a month. This is the single most important bill for Seattle to stimulate demand for energy efficiency. The superior lien provisions that will secure conservation loans are a key aspect for the capital markets. Investment in conservation is the number one greenhouse gas solution and will create jobs. When a utility's rates are based on its sales, there is a disincentive for any activity that will cause sales to decline, such as conservation. The cost recovery provisions for investor-owned utilities removes disincentives for conservation and is already used in 20 states. The bill contains cost-effectiveness provisions. PSE can do conservation above I-937 requirements. Current utility programs to promote conservation only cover about 25 percent of the cost of purchase and installation. Consumers who use multiple fuels, such as gas and electricity, get confused about whom to deal with for conservation services.

CON: The cost recovery provision for investor-owned utilities should be removed because it will cause unjustified rate increases. WUTC already has authority to allow cost recovery for conservation investments on a case-by-case basis in rate cases, which allows the commission to design a cost recovery mechanism that is fair to ratepayers and that fits the individual needs of a utility. For example, the WUTC already allows PSE to recover \$100 million in rates for conservation spending. Conservation spending is required by law under I-937, so why should utilities be able to recover these costs from ratepayers? By exempting large industrial users from the effect of a mandatory rate increase due to the recovery of conservation expenses, the bill unfairly shifts the rate increases to the remaining ratepayers. The rate of return for utilities is already above 10 percent a year. New conservation services utilities will expose local governments to the risk of defaulting loans. There are no measurements of cost-effectiveness. Local government utilities will be competing directly with the private lending industry and with current utility programs. AWB was not part of the stakeholder process. Conservation services utilities will violate the state constitutional ban on the gifting of public funds. The superior lien provision will unfairly place government utility loans above other lenders.

OTHER: Conservation services utilities should have quality assurance programs.

Persons Testifying: PRO: Jennifer Barnes, Cascadia Region Green Building Council; Jessica Finn Coven, Climate Solutions; Tammy Deets, Community Energy Solutions; Amanda Eichel, City of Seattle; Ann Grotnick, Seattle NW Securities; Kimberly Harris, PSE; Nancy Hirsh, NW Energy Coalition; Linda Irvine, citizen; Alice Ostdiek, Foster Pepper PLLC; Charlie Rogers, Home Performance Washington; Clifford Traisman, Washington Conservation Voters and WA Environmental Council; Michael Woo, Got Green.

CON: Tim Boyd, Industrial Customers of NW Utilities; Simon Fitch, Public Counsel, WA Attorney General; Bruce Folsom, Avista Utilities; Craig Gannett, Davis Wright Tremaine LLP and Avista Utilities; Chris McCabe, AWB; Brad Tower, Community Banks of WA.

OTHER: Steve Marquardt, Laborers International Union of North America NW.