

SENATE BILL REPORT

ESSB 6656

As Passed Senate, February 15, 2010

Title: An act relating to implementing a pilot program for energy conservation services for cities and towns located wholly within the electric service territories of Tacoma public utilities, Seattle city light, and Puget Sound energy.

Brief Description: Implementing a pilot program for energy conservation services.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Murray, Rockefeller, Fraser and Shin).

Brief History:

Committee Activity: Environment, Water & Energy: 1/26/10, 2/03/10 [DPS, DNP].
Passed Senate: 2/15/10, 44-2.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 6656 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Marr, Oemig and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Morton and Sheldon.

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

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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-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.

Energy Conservation Targets Under Initiative 937. The Energy Independence Act, also known as Initiative 937, requires qualifying electric utilities to pursue all available conservation that is cost-effective, reliable, and feasible. By January 1, 2010, each qualifying utility must assess the conservation it can achieve through 2019, and update the assessments every two years for the next ten-year period. Beginning January 2010, each qualifying utility must meet biennial conservation targets that are consistent with its conservation assessments.

Summary of Engrossed Substitute Bill: Pilot Program for Municipal Energy Conservation Services Utilities. From the effective date of this act to June 30, 2015, cities and towns wholly within the electric service territories of Tacoma Public Utilities, Seattle City Light, and Puget Sound Energy may create energy conservation services utilities. 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. Energy conservation services are authorized only if the cost per unit of energy saved or produced is less than the cost per unit of energy produced by the next least costly new energy resource that could be acquired to meet future demand.

Requirements for Creating an Energy Conservation Services Utility. By ordinance, a municipality may create an energy conservation services utility. Prior to creating such a utility, the municipality's legislative authority must hold a public hearing and make a legislative determination, based on presentations at the hearing, that the energy conservation services proposed to be provided by the municipality will make available additional or complementary services, target underserved areas or populations, or otherwise add incremental value to the preexisting programs and services provided by an electric or natural gas energy distribution utility servicing the municipality. In addition, energy conservation services utilities must follow quality assurance programs that include specified criteria, such as a third-party, independent verification process.

A municipality's provision of energy conservation services must be consistent with, and not limit, supplant, replace, or conflict with, any authority to provide energy conservation services through an existing municipal utility. Municipal energy conservation services utilities are not authorized to generate, transmit, distribute, or sell electricity; nor may they restrain or limit the authority of any individual, partnership, corporation, private utility, or public utility from establishing and providing energy conservation services.

Lending and Grant Authority. Energy conservation services utilities may finance conservation loans for improvements to existing structures for up to 240 months, with repayment in the form of incremental additions to existing local government utility or tax bills. Municipalities must notify the appropriate servicer of an escrow of incremental increases in monthly mortgage payments when conservation loan payments have been added to a property tax bill.

Conservation 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 created thereafter except a lien for general taxes, special assessment district assessments, liens securing energy conservations loans issued by existing municipal utilities and public utility districts, and liens securing water conservation loans issued by counties.

Energy conservation services utilities may also provide grants for energy conservation improvements to existing structures owned or occupied by persons qualifying as poor or infirm consistent with the state Constitution.

Utility Rates and Bond Authority. 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 issue general obligation or revenue bonds or other forms of indebtedness for providing all or part of the costs of energy conservation services.

Revenues from loan payments may be pledged to secure and repay any general obligation or revenue bonds. No municipality may enter into a contract to sell loans financed by an energy services conservation utility to a third party for the purpose of securitizing those loans without approval by the municipality's legislative authority. Any contract that requires a municipality to service loans that it originated must limit the liability of the municipality by prohibiting the commingling of its loans in a securities instrument with loans issued by other parties.

No indebtedness may be issued after June 30, 2015; however, indebtedness previously issued may continue to be serviced.

Annual Reports. Energy conservation service utilities must file annual reports with specified information, such as the number of customers served and the amount of assistance per customer. Municipalities must submit their reports to the respective electric utilities serving their residents, which must consolidate the reports and submit them electronically to the appropriate legislative committees by December 1 each year until the expiration of the pilot program.

Initiative 937 Conservation Targets. A qualifying electric utility under Initiative 937 may exclusively claim any conservation savings achieved by a municipal energy conservation services utility for purposes of complying with the Initiative.

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 on Original Bill: 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.