
ENGROSSED SUBSTITUTE HOUSE BILL 2289

State of Washington 61st Legislature 2009 Regular Session

By House Capital Budget (originally sponsored by Representative McCoy)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to expanding the energy freedom program; amending
2 RCW 43.325.010, 43.325.020, 43.325.030, 43.325.040, and 43.325.070;
3 creating a new section; providing an expiration date; and declaring an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature intends to modify the energy
7 freedom program and account in order to receive federal funds and other
8 sources of funding. Also, the legislature intends to expand the
9 mission of the energy freedom program to accelerate energy efficiency
10 improvements, renewable energy improvements, and deployment of
11 innovative energy technologies. Additionally, the legislature intends
12 to support, through the energy freedom program, research,
13 demonstration, and commercialization of energy efficiency improvements,
14 renewable energy improvements, and innovation energy technologies.

15 **Sec. 2.** RCW 43.325.010 and 2007 c 348 s 301 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

1 (1) "Applicant" means the state and any political subdivision of
2 the state, including port districts, counties, cities, towns, special
3 purpose districts, and other municipal corporations or quasi-municipal
4 corporations. "Applicant" may also include federally recognized tribes
5 (~~and~~), state institutions of higher education with appropriate
6 research capabilities, and any organization described in section
7 501(c)(3) of the internal revenue code.

8 (2) "Alternative fuel" means all products or energy sources used to
9 propel motor vehicles, other than conventional gasoline, diesel, or
10 reformulated gasoline. "Alternative fuel" includes, but is not limited
11 to, cellulose, liquefied petroleum gas, liquefied natural gas,
12 compressed natural gas, biofuels, biodiesel fuel, E85 motor fuel, fuels
13 containing seventy percent or more by volume of alcohol fuel, fuels
14 that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel,
15 nonhazardous motor fuel, or electricity, excluding onboard electric
16 generation.

17 (3) "Assistance" includes loans, leases, product purchases, or
18 other forms of financial or technical assistance.

19 (4) "Biofuel" includes, but is not limited to, biodiesel, ethanol,
20 and ethanol blend fuels and renewable liquid natural gas or liquid
21 compressed natural gas made from biogas.

22 (5) "Biogas" includes waste gases derived from landfills and
23 wastewater treatment plants and dairy and farm wastes.

24 (6) "Cellulose" means lignocellulosic, hemicellulosic, or other
25 cellulosic matter that is available on a renewable or recurring basis,
26 including dedicated energy crops and trees, wood and wood residues,
27 plants, grasses, agricultural residues, fibers, animal wastes and other
28 waste materials, and municipal solid waste.

29 (7) "Coordinator" means the person appointed by the director of the
30 department of community, trade, and economic development.

31 (8) "Department" means the department of community, trade, and
32 economic development.

33 (9) "Director" means the director of the department of community,
34 trade, and economic development.

35 (10) "Energy efficiency improvement" means an installation or
36 modification that is designed to reduce energy consumption. The term
37 includes, but is not limited to: Insulation; storm windows and doors;
38 automatic energy control systems; heating, ventilating, or air

1 conditioning and distribution system modifications or replacements in
2 buildings or central plants; caulking and weather stripping; energy
3 recovery systems; geothermal heat pumps; and day lighting systems.

4 (11) "Green highway zone" means an area in the state designated by
5 the department that is within reasonable proximity of state route
6 number 5, state route number 90, and state route number 82.

7 ~~((11))~~ (12) "Innovative energy technology" means, but is not
8 limited to, the following: Smart grid or smart metering; biogas from
9 landfills, wastewater treatment plants, anaerobic digesters, or other
10 processes; wave or tidal power; fuel cells; high efficiency
11 cogeneration; and energy storage systems.

12 (13) "Peer review committee" means a board, appointed by the
13 director, that includes bioenergy specialists, energy conservation
14 specialists, scientists, and individuals with specific recognized
15 expertise.

16 ~~((12))~~ (14) "Project" means the construction of facilities,
17 including the purchase of equipment, to convert farm products or wastes
18 into electricity or gaseous or liquid fuels or other coproducts
19 associated with such conversion. These specifically include fixed or
20 mobile facilities to generate electricity or methane from the anaerobic
21 digestion of organic matter, and fixed or mobile facilities for
22 extracting oils from canola, rape, mustard, and other oilseeds.
23 "Project" may also include the construction of facilities associated
24 with such conversion for the distribution and storage of such
25 feedstocks and fuels. The definition of project does not apply to
26 projects as described in RCW 43.325.020(5).

27 (15) "Renewable energy improvements" means a fixture, product,
28 system, device, or interacting group of devices that produces energy
29 from renewable resources. The term includes, but is not limited to:
30 Photovoltaic systems; solar thermal systems; small wind systems;
31 biomass systems; and geothermal systems.

32 ~~((13))~~ (16) "Refueling project" means the construction of new
33 alternative fuel refueling facilities, as well as upgrades and
34 expansion of existing refueling facilities, that will enable these
35 facilities to offer alternative fuels to the public.

36 ~~((14))~~ (17) "Research and development project" means research and
37 development, by an institution of higher education as defined in
38 subsection (1) of this section, relating to:

- 1 (a) Bioenergy sources including but not limited to biomass and
- 2 associated gases; or
- 3 (b) The development of markets for bioenergy coproducts.

4 **Sec. 3.** RCW 43.325.020 and 2007 c 348 s 302 are each amended to
5 read as follows:

6 (1) The energy freedom program is established within the
7 department. The director may establish policies and procedures
8 necessary for processing, reviewing, and approving applications made
9 under this chapter.

10 (2) When reviewing applications submitted under this program, the
11 director shall consult with those agencies and other public entities
12 having expertise and knowledge to assess the technical and business
13 feasibility of the project and probability of success. These agencies
14 may include, but are not limited to, Washington State University, the
15 University of Washington, the department of ecology, the department of
16 natural resources, the department of agriculture, the department of
17 general administration, local clean air authorities, and the Washington
18 state conservation commission.

19 (3) Except as provided in subsections (4) and (5) of this section,
20 the director, in cooperation with the department of agriculture, may
21 approve an application only if the director finds:

22 (a) The project will convert farm products, wastes, cellulose, or
23 biogas directly into electricity or biofuel or other coproducts
24 associated with such conversion;

25 (b) The project demonstrates technical feasibility and directly
26 assists in moving a commercially viable project into the marketplace
27 for use by Washington state citizens;

28 (c) The facility will produce long-term economic benefits to the
29 state, a region of the state, or a particular community in the state;

30 (d) The project does not require continuing state support;

31 (e) The assistance will result in new jobs, job retention, or
32 higher incomes for citizens of the state;

33 (f) The state is provided an option under the assistance agreement
34 to purchase a portion of the fuel or feedstock to be produced by the
35 project, exercisable by the department of general administration;

36 (g) The project will increase energy independence or diversity for
37 the state;

1 (h) The project will use feedstocks produced in the state, if
2 feasible, except this criterion does not apply to the construction of
3 facilities used to distribute and store fuels that are produced from
4 farm products or wastes;

5 (i) Any product produced by the project will be suitable for its
6 intended use, will meet accepted national or state standards, and will
7 be stored and distributed in a safe and environmentally sound manner;

8 (j) The application provides for adequate reporting or disclosure
9 of financial and employment data to the director, and permits the
10 director to require an annual or other periodic audit of the project
11 books; and

12 (k) For research and development projects, the application has been
13 independently reviewed by a peer review committee as defined in RCW
14 43.325.010 and the findings delivered to the director.

15 (4) When reviewing an application for a refueling project, the
16 coordinator may award a grant or a loan to an applicant if the director
17 finds:

18 (a) The project will offer alternative fuels to the motoring
19 public;

20 (b) The project does not require continued state support;

21 (c) The project is located within a green highway zone as defined
22 in RCW 43.325.010;

23 (d) The project will contribute towards an efficient and adequately
24 spaced alternative fuel refueling network along the green highways
25 designated in RCW 47.17.020, 47.17.135, and 47.17.140; and

26 (e) The project will result in increased access to alternative
27 fueling infrastructure for the motoring public along the green highways
28 designated in RCW 47.17.020, 47.17.135, and 47.17.140.

29 (5) When reviewing an application for energy efficiency
30 improvements, renewable energy improvements, or innovative energy
31 technology, the director may award a grant or a loan to an applicant if
32 the director finds:

33 (a) The project or program will result in increased access for the
34 public, state and local governments, and businesses to energy
35 efficiency improvements, renewable energy improvements, or innovative
36 energy technologies;

37 (b) The project or program demonstrates technical feasibility and

1 directly assists in moving a commercially viable project into the
2 marketplace for use by Washington state citizens;

3 (c) The project or program does not require continued state
4 support; or

5 (d) The federal government has provided funds with a limited time
6 frame for use for energy independence and security, energy efficiency,
7 renewable energy, innovative energy technologies, or conservation.

8 (6)(a) The director may approve a project application for
9 assistance under subsection (3) of this section up to five million
10 dollars. In no circumstances shall this assistance constitute more
11 than fifty percent of the total project cost.

12 (b) The director may approve a refueling project application for a
13 grant or a loan under subsection (4) of this section up to fifty
14 thousand dollars. In no circumstances shall a grant or a loan award
15 constitute more than fifty percent of the total project cost.

16 ((+6)) (7) The director shall enter into agreements with approved
17 applicants to fix the terms and rates of the assistance to minimize the
18 costs to the applicants, and to encourage establishment of a viable
19 bioenergy or biofuel industry, or a viable energy efficiency, renewable
20 energy, or innovative energy technology industry. The agreement shall
21 include provisions to protect the state's investment, including a
22 requirement that a successful applicant enter into contracts with any
23 partners that may be involved in the use of any assistance provided
24 under this program, including services, facilities, infrastructure, or
25 equipment. Contracts with any partners shall become part of the
26 application record.

27 ((+7)) (8) The director may defer any payments for up to twenty-
28 four months or until the project starts to receive revenue from
29 operations, whichever is sooner.

30 **Sec. 4.** RCW 43.325.030 and 2007 c 348 s 205 are each amended to
31 read as follows:

32 The director of the department shall appoint a coordinator that is
33 responsible for:

34 (1) Managing, directing, inventorying, and coordinating state
35 efforts to promote, develop, and encourage ((a)) biofuel((s)) and
36 energy efficiency, renewable energy, and innovative energy technology
37 markets in Washington;

1 (2) Developing, coordinating, and overseeing the implementation of
2 a plan, or series of plans, for the production, transport,
3 distribution, and delivery of biofuels produced predominantly from
4 recycled products or Washington feedstocks;

5 (3) Working with the departments of transportation and general
6 administration, and other applicable state and local governmental
7 entities and the private sector, to ensure the development of biofuel
8 fueling stations for use by state and local governmental motor vehicle
9 fleets, and to provide greater availability of public biofuel fueling
10 stations for use by state and local governmental motor vehicle fleets;

11 (4) Coordinating with the Western Washington University alternative
12 automobile program for opportunities to support new Washington state
13 technology for conversion of fossil fuel fleets to biofuel, hybrid, or
14 alternative fuel propulsion;

15 (5) Coordinating with the University of Washington's college of
16 forest management and the Olympic natural resources center for the
17 identification of barriers to using the state's forest resources for
18 fuel production, including the economic and transportation barriers of
19 physically bringing forest biomass to the market;

20 (6) Coordinating with the department of agriculture and Washington
21 State University for the identification of other barriers for future
22 biofuels development and development of strategies for furthering the
23 penetration of the Washington state fossil fuel market with Washington
24 produced biofuels, particularly among public entities.

25 **Sec. 5.** RCW 43.325.040 and 2007 c 348 s 305 are each amended to
26 read as follows:

27 (1) The energy freedom account is created in the state treasury.
28 All receipts from appropriations made to the account (~~and~~), any loan
29 payments of principal and interest derived from loans made under this
30 chapter, and moneys provided by the federal government for energy
31 independence and security, innovative energy technologies, energy
32 efficiency, renewable energy, and conservation must be deposited into
33 the account. Moneys in the account may be spent only after
34 appropriation. Expenditures from the account may be used only for
35 assistance for projects consistent with this chapter or otherwise
36 authorized by the legislature.

1 (a) Repayments of principal and interest from loans made to
2 projects defined in RCW 43.325.010(14) must be used only for financial
3 assistance to further funding of projects defined under that section.

4 (b) Repayments of principal and interest from loans made to energy
5 efficiency improvement, renewable energy improvement, and innovative
6 energy technology projects as defined in RCW 43.325.010 must be used
7 only for financial assistance to further funding of projects defined
8 under that section.

9 (2) The green energy incentive account is created in the state
10 treasury as a subaccount of the energy freedom account. All receipts
11 from appropriations made to the green energy incentive account shall be
12 deposited into the account, and may be spent only after appropriation.
13 Expenditures from the account may be used only for:

14 (a) Refueling projects awarded under this chapter;

15 (b) Pilot projects for plug-in hybrids, including grants provided
16 for the electrification program set forth in RCW 43.325.110; and

17 (c) Demonstration projects developed with state universities as
18 defined in RCW 28B.10.016 and local governments that result in the
19 design and building of a hydrogen vehicle fueling station.

20 (3) The nonstate funding energy account is created in the state
21 treasury as a subaccount of the energy freedom account. All receipts
22 from appropriations made to the nonstate energy funding account shall
23 be deposited into the account, and may be spent only after
24 appropriation.

25 (4) Any state agency receiving funding from the energy freedom
26 account is prohibited from retaining greater than three percent of any
27 funding provided from the energy freedom account for administrative
28 overhead or other deductions not directly associated with conducting
29 the research, projects, or other end products that the funding is
30 designed to produce unless this provision is waived in writing by the
31 director.

32 ~~((4))~~ (5) Any university, institute, or other entity that is not
33 a state agency receiving funding from the energy freedom account is
34 prohibited from retaining greater than fifteen percent of any funding
35 provided from the energy freedom account for administrative overhead or
36 other deductions not directly associated with conducting the research,
37 projects, or other end products that the funding is designed to
38 produce.

1 (~~(5)~~) (6) Subsections (2) through (~~(4)~~) (5) of this section do
2 not apply to assistance awarded for projects under RCW 43.325.020(3).

3 **Sec. 6.** RCW 43.325.070 and 2007 c 348 s 303 are each amended to
4 read as follows:

5 (1) If the total requested dollar amount of assistance awarded for
6 projects under RCW 43.325.020(3) exceeds the amount available in the
7 energy freedom account created in RCW 43.325.040, the applications must
8 be prioritized based upon the following criteria:

9 (a) The extent to which the project will help reduce dependence on
10 petroleum fuels and imported energy either directly or indirectly;

11 (b) The extent to which the project will reduce air and water
12 pollution either directly or indirectly;

13 (c) The extent to which the project will establish a viable
14 bioenergy or biofuel production capacity in Washington;

15 (d) The benefits to Washington's agricultural producers;

16 (e) The benefits to the health of Washington's forests;

17 (f) The beneficial uses of biogas; and

18 (g) The number and quality of jobs and economic benefits created by
19 the project.

20 (2) This section does not apply to grants or loans awarded for
21 refueling projects under RCW 43.325.020 (4) and (5).

22 NEW SECTION. **Sec. 7.** Sections 2, 3, 5, and 6 of this act expire
23 June 30, 2016.

24 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

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