
SUBSTITUTE SENATE BILL 6656

State of Washington 61st Legislature 2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Murray, Rockefeller, Fraser, and Shin)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to implementing a pilot program for energy
2 conservation services for cities and towns located wholly within the
3 electric service territories of Tacoma public utilities, Seattle city
4 light, and Puget Sound energy; amending RCW 35.92.070; adding a new
5 chapter to Title 35 RCW; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington
8 state has the opportunity to realize a prosperous, affordable, and
9 clean energy future through energy efficiency.

10 (2) The pilot financing mechanism established in this chapter may
11 enable local governments to expand and improve existing energy
12 conservation and energy efficiency loan programs to aid the private and
13 nonprofit sectors in undertaking residential, commercial, and
14 industrial energy efficiency upgrades.

15 (3) The legislature finds that this financing tool may lead to
16 reductions in household energy bills, provide incentives for the
17 creation of new family-wage jobs in construction, manufacturing, and
18 installation of energy-saving products, encourage investments by the

1 utility sector in a cleaner environment, decrease the need for new
2 power plant construction, and increase energy security.

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

5 (1) "Energy conservation equipment" means equipment for the
6 conservation or more efficient use of energy, regardless of source,
7 installed at or near the intended place of use. However, the equipment
8 may not include any individual equipment or co-owned and controlled
9 cluster of equipment with a generating capacity that exceeds the net
10 metering system electrical generating capacity threshold established in
11 RCW 80.60.010(10)(a). Energy conservation equipment includes, but is
12 not limited to: Weatherizing equipment; energy-conserving lighting
13 systems, heating and cooling systems, equipment to replace inefficient
14 wood burning heating devices, and appliances; and equipment or systems
15 that permit owners or substantial users of property or equipment to
16 generate all or a portion of their own electricity through the on-site
17 installation of distributed electricity generation systems that use as
18 fuel solar, wind, geothermal, or hydropower, or other renewable
19 resources available on-site and not from a commercial source.

20 (2) "Energy conservation services" means the provision of services
21 to assist owners or substantial users of structures or energy
22 conservation equipment in the acquisition, installation, and operation
23 of energy conservation equipment, fixtures, or improvements. Energy
24 conservation services include, but are not limited to: Energy audit
25 services; weatherization services; energy conservation equipment
26 financing, acquisition, and installation services; services to replace
27 inefficient wood burning heating devices; and other measures to reduce
28 energy on-site consumption. Energy conservation services may not be
29 considered "a conversion from one energy source to another" that is
30 limited to the change or substitution of one commercial energy supplier
31 for another commercial energy supplier.

32 (3) "Municipality" means a city or town.

33 NEW SECTION. **Sec. 3.** The provision of energy conservation
34 services under this chapter is declared to be a public use and a public
35 and municipal purpose, which may be conducted through a public utility
36 operated by a municipality. Energy conservation services may be

1 provided through an existing utility system already operated by the
2 municipality. A municipality that provides energy conservation
3 services under this section is declared to be engaged in the sale or
4 distribution of energy services under Article VIII, section 10 of the
5 state Constitution.

6 NEW SECTION. **Sec. 4.** (1)(a) The authority provided under this
7 chapter applies to municipalities wholly located within the electric
8 service territories of Tacoma public utilities, Seattle city light, and
9 Puget Sound energy as of the effective date of this section.

10 (b) The authorization in (a) of this subsection is limited to the
11 municipality's boundaries and do not extend to any unincorporated areas
12 in an electric utility's service area.

13 (2)(a) Subject to a majority vote of the people under RCW
14 35.92.070, a municipality may create an energy conservation services
15 utility for the purpose of providing to its inhabitants and property
16 owners energy conservation services that lead to the more efficient
17 consumption of energy resources, from whatever source generated, and
18 may construct, purchase, acquire, lease, add to, extend, maintain, and
19 operate a system or program of energy conservation services.

20 (b) Energy conservation services authorized under this chapter must
21 follow a plan adopted by the municipal legislative authority that
22 includes the following criteria: (i) The services must be additional
23 or complementary to services already provided by an existing electric
24 or natural gas energy distribution utility serving the municipality; or
25 (ii) the services must target underserved areas or populations in the
26 municipality.

27 (c) Energy conservation services are only authorized under this
28 chapter if the cost per unit of energy saved or produced by the use of
29 such materials and equipment is less than the cost per unit of energy
30 produced by the next least costly new energy resource that could be
31 acquired to meet future demand.

32 (3) For the purpose of providing energy conservation services, the
33 municipality has the full power to operate and regulate such systems
34 and programs; to enter into agreements for the maintenance and
35 operation of any facilities, equipment, or systems, under such terms
36 and conditions as may be determined by the legislative authority of the
37 municipality to be in the municipality's interest; and other powers as

1 may be necessary for the provision and financing of energy conservation
2 services. Nothing in this section authorizes any municipality to
3 generate, transmit, distribute, or sell electricity. Nothing in this
4 section may be construed to restrain or limit the authority of any
5 individual, partnership, corporation, private utility, or public
6 utility from establishing and providing energy conservation services.

7 (4) The legislative authority of the municipality has full
8 authority to set rates or charges for energy conservation services
9 provided to customers of the energy conservation service utility if the
10 rates charged are uniform for the same class of customer or service.
11 In classifying customers served or services furnished, the legislative
12 authority may consider: The difference in cost of services to the
13 various customers; the location of the various customers within the
14 municipality; the difference in cost of maintenance, operation, repair,
15 and replacement of the various parts of the system; the different
16 character of the services furnished various customers; the quantity and
17 quality of the services furnished; and any other matters that present
18 a reasonable difference as a ground for distinction. The legislative
19 authority of the municipality has the full authority to regulate and
20 control the energy conservation services so delivered, together with
21 the right to handle and sell or lease any energy conservation
22 equipment, fixtures, or accessories of any kind, necessary and
23 convenient for the provision of energy conservation services.

24 (5) A qualifying utility under RCW 19.280.030 that serves a
25 municipality providing energy conservation services under this chapter
26 may exclusively claim the energy savings achieved by the energy
27 conservation services for purposes of complying with RCW 19.280.040.
28 At the request of the qualifying utility, municipalities must provide
29 the qualifying utility, the department of commerce, and the Washington
30 utilities and transportation commission with any relevant data to
31 effectuate this purpose.

32 (6) A municipality may issue general obligation or revenue bonds,
33 notes, warrants, or other evidences of indebtedness for the purposes of
34 providing all or part of the costs of providing energy conservation
35 services, which shall be issued and sold in accordance with chapters
36 39.44, 39.46, 39.50, and 39.53 RCW. No indebtedness may be issued
37 after June 30, 2015. However, indebtedness previously issued may
38 continue to be serviced.

1 (7) Municipalities providing energy conservation services under
2 this chapter must establish quality assurance programs that must
3 include the following: (a) A requirement that contractors be
4 prequalified; (b) the maintenance of a list of prequalified
5 contractors; (c) the creation of minimum standards for prequalified
6 contractors that include: (i) Legal compliance procedures; (ii) proper
7 classification of employees; (iii) use of a qualified energy efficiency
8 workforce if such workers are available; and (iv) maintenance of
9 records needed to verify compliance; and (d) a third-party, independent
10 verification process.

11 (8) The authority granted in this section must be consistent with,
12 and not limit, supplant, replace, or conflict with, any authority to
13 provide energy conservation services through an existing municipal
14 utility.

15 (9) Energy conservation service utilities formed under this chapter
16 must file annual reports stating the number of customers served, the
17 amount of assistance per customer, the estimated energy savings per
18 customer, and the effectiveness of their quality assurance programs.
19 Municipalities must submit their reports to the respective electric
20 utilities serving their residents, which must consolidate the reports
21 and submit them electronically to the appropriate legislative
22 committees by December 1st each year until the expiration of the pilot
23 program.

24 NEW SECTION. **Sec. 5.** (1) Any municipality engaged in the
25 provision of energy conservation services under this chapter is
26 authorized, within limits established by the Constitution of the state
27 of Washington, to assist the owners of structures or equipment in
28 financing the acquisition and installation of materials and equipment,
29 for compensation or otherwise, for the conservation or more efficient
30 use of energy in such structures or equipment pursuant to an energy
31 conservation plan adopted by the municipality if the cost per unit of
32 energy saved or produced by the use of such materials and equipment is
33 less than the cost per unit of energy produced by the next least costly
34 new energy resource that could be acquired to meet future demand. Any
35 financing authorized under this chapter may only be used for energy
36 conservation services in existing structures.

1 (2) Except where otherwise authorized, such assistance is limited
2 to:

3 (a) Providing an inspection of the structure or equipment, either
4 directly or through one or more inspectors under contract, to determine
5 and inform the owner of the estimated cost of purchasing and installing
6 conservation materials and equipment for which financial assistance
7 will be approved and the estimated life cycle savings in energy costs
8 that are likely to result from the installation of the materials or
9 equipment;

10 (b) Providing a list of businesses that sell and install the
11 materials and equipment within or in close proximity to the service
12 area of the municipality, each of which businesses must have requested
13 to be included and must have the ability to provide the products in a
14 workmanlike manner and to utilize the materials in accordance with the
15 prevailing national standards;

16 (c) Arranging to have approved conservation materials and equipment
17 installed by a private contractor whose bid is acceptable to the owner
18 of the residential structure and verifying the installation; and

19 (d) Arranging or providing financing for the purchase and
20 installation of approved conservation materials and equipment. The
21 materials and equipment must be purchased from a private business and
22 be installed by a private business or the owner.

23 (3) Pay back must be in the form of incremental additions to an
24 existing local government utility or tax bill, billed either together
25 with use charge or separately. Loans may not exceed two hundred forty
26 months in length. The municipality may make assistance available in
27 the form of grants made under this section for energy conservation
28 improvements to existing structures owned or occupied by persons
29 qualifying as poor or infirm consistent with the state Constitution.

30 (4) The municipal legislative authority shall approve the aggregate
31 amount of such loans and the repayment terms by ordinance and may, by
32 ordinance, delegate to staff the approval of individual loans
33 consistent with loan program guidelines approved in the ordinance. The
34 municipality and the property owner shall enter into a loan agreement
35 setting forth the terms of the loan, which agreement may provide for
36 acceleration in the event a loan installment is delinquent. In order
37 to secure loans, the municipality shall have a statutory lien on the
38 property, not exceeding five percent of the assessed value of the

1 property as of the last assessment preceding the loan funding date, on
2 which energy conservation improvements so financed are installed or
3 constructed. The statutory lien shall be paramount and superior to any
4 other lien or encumbrance theretofore or thereafter created except a
5 lien for general taxes, special assessment district assessments, and
6 liens filed under RCW 35.92.360, 54.16.280, or 36.94.460. Any lien for
7 any amount in excess of five percent of the assessed value of the
8 property may be obtained and perfected in accordance with applicable
9 law. The loan shall be a lien upon property from the time the loan
10 agreement is executed. If the municipal legislative authority in
11 granting loans has acted in good faith and without fraud, the loan
12 shall be valid and enforceable as such and the lien thereof upon the
13 property shall be valid.

14 (5) The municipality may foreclose a lien in an action in the
15 superior court. All or any of the tracts subject to such a lien may be
16 proceeded against in a single action, and all parties appearing of
17 record as owning or claiming to own or having an interest in or lien
18 upon the tracts involved shall be impleaded in the action as parties
19 defendant. An action to foreclose a lien must be commenced within two
20 years after the date that the loan first becomes subject to
21 acceleration under the loan documents. Liens to secure loans may be
22 foreclosed in the manner provided by RCW 35.67.250 through 35.67.270.

23 (6) The municipality may pledge revenues from loan payments to
24 secure and repay general obligation or revenue bonds, notes, or other
25 forms of indebtedness issued by or on behalf of the municipality, which
26 indebtedness shall be issued in accordance with this chapter and
27 chapters 39.44, 39.46, 39.50, and 39.53 RCW. For the purpose of
28 securing the payment of the principal of and interest on any bonds or
29 notes, the municipality may create a reserve fund. The principal
30 amount of any loan may include a proportionate share of the costs of
31 issuing the bonds, notes, or other indebtedness, and may include up to
32 an additional amount to fund a reserve fund, consistent with RCW
33 39.44.140. The bonds, warrants, or other evidences of indebtedness
34 shall be deemed to be for capital purposes within the meaning of the
35 uniform system of accounts for municipal corporations.

36 **Sec. 6.** RCW 35.92.070 and 1987 c 145 s 1 are each amended to read
37 as follows:

1 When the governing body of a city or town deems it advisable that
2 the city or town purchase, acquire, or construct any such public
3 utility, or make any additions and betterments thereto or extensions
4 thereof, it shall provide therefor by ordinance, which shall specify
5 and adopt the system or plan proposed, and declare the estimated cost
6 thereof, as near as may be, and the ordinance shall be submitted for
7 ratification or rejection by majority vote of the voters of the city or
8 town at a general or special election.

9 (1) No submission shall be necessary:

10 (a) When the work proposed is an addition to, or betterment of,
11 extension of, or an increased water supply for existing waterworks, or
12 an addition, betterment, or extension of an existing system or plant of
13 any other public utility;

14 (b) When in the charter of a city a provision has been adopted
15 authorizing the corporate authorities thereof to provide by ordinance
16 for acquiring, opening, or operating any of such public utilities; or

17 (c) When in the judgment of the corporate authority, the public
18 health is being endangered by the discharge of raw or untreated sewage
19 into any body of water and the danger to the public health may be
20 abated by the construction and maintenance of a sewage disposal plant.

21 (2) Notwithstanding subsection (1) of this section, submission to
22 the voters shall be necessary if:

23 (a) The project or work may produce electricity for sale in excess
24 of present or future needs of the water system;

25 (b) The city or town does not own or operate an electric utility
26 system;

27 (c) The work involves an ownership greater than twenty-five percent
28 in a new water supply project combined with an electric generation
29 facility; and

30 (d) The combined facility has an installed capacity in excess of
31 five megawatts.

32 (3) Notwithstanding subsection (1) of this section, submission to
33 the voters shall be necessary to make extensions to a public utility
34 which would expand the previous service capacity by fifty percent or
35 more, where such increased service capacity is financed by the issuance
36 of general obligation bonds.

37 (4) Notwithstanding subsection (1) of this section, submission to

1 the voters shall be necessary to form an energy conservation services
2 utility under chapter 35.-- RCW (the new chapter created in section 7
3 of this act).

4 (5) Thirty days' notice of the election shall be given in the
5 official newspaper of the city or town, by publication at least once
6 each week in the paper during such time.

7 ~~((+5+))~~ (6) When a proposition has been adopted, or in the cases
8 where no submission is necessary, the corporate authorities of the city
9 or town may proceed forthwith to purchase, construct, and acquire the
10 public utility or make additions, betterments, and extensions thereto
11 and to make payment therefor.

12 NEW SECTION. Sec. 7. Sections 1 through 5 of this act constitute
13 a new chapter in Title 35 RCW.

14 NEW SECTION. Sec. 8. Sections 1 through 6 of this act expire June
15 30, 2015.

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