
SENATE BILL 6035

State of Washington

62nd Legislature

2012 Regular Session

By Senators Delvin, Honeyford, and Schoesler

Read first time 01/09/12. Referred to Committee on Energy, Natural Resources & Marine Waters.

1 AN ACT Relating to transferring the duties of the energy policy
2 division of the department of commerce to the office of the governor
3 and Washington State University; amending RCW 42.56.270; adding a new
4 section to chapter 43.330 RCW; adding a new section to chapter 28B.30
5 RCW; adding new sections to chapter 43.06 RCW; repealing RCW
6 43.330.904, 43.21F.010, 43.21F.025, 43.21F.045, 43.21F.055, 43.21F.060,
7 43.21F.062, 43.21F.088, and 43.21F.090; and prescribing penalties.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
10 responsibilities of state government need to be limited to core
11 services in support of public safety and welfare. Services provided by
12 the energy policy division of the department of commerce are primarily
13 advisory and can be transferred to the office of the governor to
14 achieve greater efficiency, transparency, and accountability in state
15 government. The energy policy duties to be performed by the office of
16 the governor build upon the functions currently fulfilled by staff in
17 that office and must be prioritized in the following order of public
18 importance: (a) Protect the public health, safety, and welfare during
19 energy emergencies; (b) provide energy policy advice to the governor;

1 (c) receive and disburse federal energy-related programmatic funding to
2 other agencies; (d) collect and disseminate impartial and objective
3 information and analysis to the governor and legislature; (e) revise
4 and update the state energy strategy, as funding is appropriated by the
5 legislature for that purpose; and (f) develop and maintain a unified
6 state position on energy facility siting, as funding is provided for
7 that purpose.

8 (2) The duties transferred to and to be conducted by the office of
9 the governor and the energy extension program of Washington State
10 University must be performed with existing resources. It is the intent
11 of sections 2 through 8 of this act to perpetually save state general
12 funds that have historically been appropriated for the performance of
13 the duties transferred under sections 2 through 8 of this act.

14 NEW SECTION. **Sec. 2.** (1) In addition to the duties prescribed in
15 this chapter, the office of the governor has the following powers and
16 duties:

17 (a) Administer energy allocation and curtailment programs in
18 accordance with chapter 43.21G RCW. During energy shortage
19 emergencies, the office of the governor shall give priority in the
20 allocation of energy resources to maintaining the public health,
21 safety, and welfare of the state's citizens and industry in order to
22 minimize adverse impacts on their physical, social, and economic well-
23 being;

24 (b) Prepare and update contingency plans for implementation in the
25 event of energy shortages or emergencies. The plans must conform to
26 chapter 43.21G RCW and must include procedures for determining when
27 these shortages or emergencies exist, the state officers and agencies
28 to participate in the determination, and actions to be taken by various
29 agencies and officers of state government in order to reduce hardship
30 and maintain the general welfare during these emergencies. The office
31 of the governor shall coordinate the activities undertaken pursuant to
32 this subsection (1)(b) with other persons. The components of plans
33 that require legislation for their implementation must be presented to
34 the legislature in the form of proposed legislation at the earliest
35 practicable date. The office of the governor shall report to the
36 legislature on probable, imminent, and existing energy shortages; and

1 (c) Obtain all necessary and existing information from energy
2 producers, suppliers, and consumers, doing business within the state of
3 Washington, from political subdivisions in this state, or any person as
4 may be necessary to carry out the provisions of chapter 43.21G RCW.
5 However, if the information is available in reports made to another
6 state agency, the office of the governor shall obtain it from that
7 agency. Further, to the maximum extent practicable, informational
8 requests to energy companies regulated by the Washington state
9 utilities and transportation commission must be channeled through the
10 utilities and transportation commission and must be accepted in the
11 format normally used by the companies. This information may include
12 but not be limited to:

- 13 (i) Sales volume;
- 14 (ii) Forecasts of energy requirements; and
- 15 (iii) Energy costs.

16 (2) In accordance with RCW 42.56.270(22), information furnished
17 under subsection (1)(c) of this section is confidential and must be
18 maintained as such if so requested by the person providing the
19 information if the information is proprietary. It is unlawful to
20 disclose this information except as otherwise provided. A violation is
21 punishable, upon conviction, by a fine of not more than one thousand
22 dollars for each offense. In addition, any person who willfully or
23 with criminal negligence, as defined in RCW 9A.08.010, discloses
24 confidential information in violation of this subsection may be subject
25 to removal from office or immediate dismissal from public employment.
26 Nothing in this subsection prohibits the use of confidential
27 information to prepare statistics or other general data for publication
28 when it is so presented as to prevent identification of particular
29 persons or sources of confidential information.

30 NEW SECTION. **Sec. 3.** In addition to the duties prescribed in this
31 chapter, the office of the governor shall:

32 (1) Supervise and administer energy-related activities as specified
33 in section 7(1) of this act and advise the governor and the legislature
34 with respect to energy matters affecting the state.

35 (2) Develop and disseminate impartial and objective energy
36 information and analysis, while taking full advantage of the

1 capabilities of the state's institutions of higher education, national
2 laboratory, and other public and private entities, including energy
3 providers, with relevant expertise and analytical capabilities.

4 (3) Receive funds obtained from the federal government or other
5 sources by means of contracts, grants, awards, payments for services,
6 and other devices: (a) In support of the duties enumerated in this
7 chapter; and (b) to disseminate to other agencies as appropriate to
8 effectuate the purposes to which those funds must be used.

9 (4) Provide assistance, space, and other support as may be
10 necessary for the activities of the state's two representatives to the
11 Pacific Northwest electric power and conservation planning council. To
12 the extent consistent with federal law, the director of the Pacific
13 Northwest electric power and conservation planning council shall
14 request that Washington's council members request the administrator of
15 the Bonneville power administration to reimburse the state for the
16 expenses associated with the support as provided in the Pacific
17 Northwest electric power planning and conservation act (P.L. 96-501).

18 NEW SECTION. **Sec. 4.** (1) The legislature finds that the state
19 needs to implement a comprehensive energy planning process that:

20 (a) Is based on high quality, unbiased analysis;

21 (b) Engages public agencies and stakeholders in a thoughtful,
22 deliberative process that creates a cohesive plan that earns sustained
23 support of the public and organizations and institutions that will
24 ultimately be responsible for implementation and execution of the plan;
25 and

26 (c) Establishes policies and practices needed to ensure the
27 effective implementation of the strategy.

28 (2) The legislature further finds that energy drives the entire
29 modern economy from petroleum for vehicles to electricity to light
30 homes and power businesses. The legislature further finds that the
31 nation and the world have started the transition to a clean energy
32 economy, with significant improvements in energy efficiency and
33 investments in new clean and renewable energy resources and
34 technologies. The legislature further finds this transition may
35 increase or decrease energy costs and efforts should be made to
36 mitigate cost increases.

1 (3) The legislature finds and declares that it is the continuing
2 purpose of state government, consistent with other essential
3 considerations of state policy, to foster wise and efficient energy use
4 and to promote energy self-sufficiency through the use of indigenous
5 and renewable energy sources, consistent with the promotion of reliable
6 energy sources, the general welfare, and the protection of
7 environmental quality.

8 (4) The legislature further declares that a successful state energy
9 strategy must balance three goals to:

10 (a) Maintain competitive energy prices that are fair and reasonable
11 for consumers and businesses and support our state's continued economic
12 success;

13 (b) Increase competitiveness by fostering a clean energy economy
14 and jobs through business and workforce development; and

15 (c) Meet the state's obligations to reduce greenhouse gas
16 emissions.

17 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
18 appropriated for this specific purpose, the office of the governor
19 shall review the state energy strategy as developed under section 1,
20 chapter 201, Laws of 1991, periodically with the guidance of an
21 advisory committee. For each review, an advisory committee must be
22 established with a membership resembling as closely as possible the
23 original energy strategy advisory committee specified under section 1,
24 chapter 201, Laws of 1991. Upon completion of a public hearing
25 regarding the advisory committee's advice and recommendations for
26 revisions to the energy strategy, a written report must be conveyed by
27 the appropriate legislative committees. Any advisory committee
28 established under this section must be dissolved within three months
29 after the committee's written report is conveyed.

30 (2) The office of the governor shall use the following principles
31 to guide development and implementation of the state's energy strategy
32 and to meet the goals of section 6 of this act:

33 (a) Pursue all cost-effective energy efficiency and conservation as
34 the state's preferred energy resource, consistent with state law;

35 (b) Ensure that the state's energy system meets the health,
36 welfare, and economic needs of its citizens with particular emphasis on
37 meeting the needs of low-income and vulnerable populations;

1 (c) Maintain and enhance economic competitiveness by ensuring an
2 affordable and reliable supply of energy resources and by supporting
3 clean energy technology innovation, access to clean energy markets
4 worldwide, and clean energy business and workforce development;

5 (d) Reduce dependence on fossil fuel energy sources through
6 improved efficiency and development of cleaner energy sources, such as
7 bioenergy, low-carbon energy sources, and natural gas, and leveraging
8 the indigenous resources of the state for the production of clean
9 energy;

10 (e) Improve efficiency of transportation energy use through
11 advances in vehicle technology, increased system efficiencies,
12 development of electricity, biofuels, and other clean fuels, and
13 regional transportation planning to improve transportation choices;

14 (f) Meet the state's statutory greenhouse gas limits and
15 environmental requirements as the state develops and uses energy
16 resources;

17 (g) Build on the advantage provided by the state's clean regional
18 electrical grid by expanding and integrating additional carbon-free and
19 carbon-neutral generation, and improving the transmission capacity
20 serving the state;

21 (h) Make state government a model for energy efficiency, use of
22 clean and renewable energy, and greenhouse gas-neutral operations; and

23 (i) Maintain and enhance our state's existing energy
24 infrastructure.

25 (3) The office of the governor shall monitor the actions of all
26 agencies of the state for consistent implementation of the state's
27 energy policy, including applicable statutory policies and goals
28 relating to energy supply and use.

29 NEW SECTION. **Sec. 6.** (1) Subject to the provision of funds
30 pursuant to subsection (2) of this section, the office of the governor
31 must develop guidance applicable to all state agencies for achieving a
32 unified state position upon matters involving the siting and operation
33 of renewable energy facilities in the state's coastal and estuarine
34 marine waters. The guidance must provide procedures for coordinating
35 the views and responsibilities of any state agency with jurisdiction or
36 expertise over the matter under consideration, which may include
37 federal policy proposals, activities, permits, licenses, or the

1 extension of funding for activities in or affecting the state's marine
2 waters. In developing the guidance, the office must consult with
3 agencies with primary responsibilities for permitting and management of
4 marine waters and bedlands, including the departments of natural
5 resources, ecology, transportation, and fish and wildlife, and the
6 state parks and recreation commission, the Puget Sound partnership, and
7 the energy facility site evaluation council. The office of the
8 governor must also consult and incorporate relevant information from
9 the regional activities related to renewable energy siting in marine
10 waters, including those under the west coast governors' agreement on
11 ocean health.

12 (2) The office of the governor may not commence development of the
13 guidance until federal, private, or other nonstate funding is secured
14 for this activity. The office of the governor must adopt the guidance
15 within one year of securing the funding.

16 (3) This section is intended to promote consistency and multiple
17 agency coordination in developing positions and exercising jurisdiction
18 in matters involving the siting and operation of renewable energy
19 facilities and does not diminish or abrogate the authority or
20 jurisdiction of any state agency over such matters established under
21 any other law.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.330 RCW
23 to read as follows:

24 (1) All powers, duties, and functions of the department of commerce
25 relating to energy resource policy and planning are transferred to the
26 office of the governor. All references to the director of the
27 department of commerce in the Revised Code of Washington shall be
28 construed to mean the office of the governor when referring to the
29 functions transferred in this section.

30 (2)(a) All reports, documents, surveys, books, records, files,
31 papers, or written material in the possession of the department
32 pertaining to the powers, functions, and duties transferred shall be
33 delivered to the custody of the office of the governor. All cabinets,
34 furniture, office equipment, motor vehicles, and other tangible
35 property employed by the department in carrying out the powers,
36 functions, and duties transferred shall be made available to the

1 department or the energy extension program of Washington State
2 University.

3 (b) All software and database property employed by the department
4 in carrying out the powers, functions, and duties transferred shall be
5 delivered to the custody of the office of the governor or the
6 Washington state extension energy program, as determined to be
7 appropriate by the office of financial management.

8 (c) Whenever any question arises as to the transfer of any funds,
9 books, documents, records, papers, files, software, database,
10 equipment, or other tangible property used or held in the exercise of
11 the powers and the performance of the duties and functions transferred,
12 the director of financial management shall make a determination as to
13 the proper allocation and certify the same to the state agencies
14 concerned.

15 (d) Any appropriations made to the department for carrying out the
16 powers, functions, and duties transferred shall, on the effective date
17 of this section, be transferred and credited to the office of the
18 governor.

19 (3) All rules and all pending business before the department
20 pertaining to the powers, functions, and duties transferred shall be
21 continued and acted upon by the office of the governor. All existing
22 contracts and obligations shall remain in full force and shall be
23 performed by the office of the governor.

24 (4) The transfer of the powers, duties, and functions of the
25 department does not affect the validity of any act performed before the
26 effective date of this section.

27 (5) If apportionments of budgeted funds are required because of the
28 transfers directed by this section, the director of the office of
29 financial management shall certify the apportionments to the agencies
30 affected, the state auditor, and the state treasurer. Each of these
31 shall make the appropriate transfer and adjustments in funds and
32 appropriation.

33 (6) The department shall direct the closure of the financial
34 records of the energy policy division.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.30 RCW
36 to read as follows:

37 The Washington State University extension energy program shall:

1 (1) Actively seek to maximize federal and other nonstate funding
2 and support to the state for energy efficiency, renewable energy,
3 emerging energy technologies, and other activities of benefit to the
4 state's overall energy future.

5 (2) Establish and maintain a central repository in state government
6 for collection of existing data on energy resources, including:

7 (a) Supply, demand, costs, utilization technology, projections, and
8 forecasts;

9 (b) Comparative costs of alternative energy sources, uses, and
10 applications; and

11 (c) Inventory data on energy research projects in the state
12 conducted under either public auspices or private auspices, or both,
13 and the results thereof.

14 (3) Coordinate federal energy programs appropriate for state-level
15 implementation, carry out the programs as are assigned to it by the
16 legislature, and monitor federally funded local energy programs as
17 required by federal or state regulations.

18 (4) Not advocate energy policies before the legislature, or any
19 state or local government agency, nor duplicate an activity performed
20 by any other state agency and officers and other persons.

21 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act are each
22 added to chapter 43.06 RCW and codified with the subchapter heading of
23 "Governor's Energy Office."

24 **Sec. 10.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each
25 amended to read as follows:

26 The following financial, commercial, and proprietary information is
27 exempt from disclosure under this chapter:

28 (1) Valuable formulae, designs, drawings, computer source code or
29 object code, and research data obtained by any agency within five years
30 of the request for disclosure when disclosure would produce private
31 gain and public loss;

32 (2) Financial information supplied by or on behalf of a person,
33 firm, or corporation for the purpose of qualifying to submit a bid or
34 proposal for (a) a ferry system construction or repair contract as
35 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
36 or improvement as required by RCW 47.28.070;

1 (3) Financial and commercial information and records supplied by
2 private persons pertaining to export services provided under chapters
3 43.163 and 53.31 RCW, and by persons pertaining to export projects
4 under RCW 43.23.035;

5 (4) Financial and commercial information and records supplied by
6 businesses or individuals during application for loans or program
7 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
8 43.168 RCW, or during application for economic development loans or
9 program services provided by any local agency;

10 (5) Financial information, business plans, examination reports, and
11 any information produced or obtained in evaluating or examining a
12 business and industrial development corporation organized or seeking
13 certification under chapter 31.24 RCW;

14 (6) Financial and commercial information supplied to the state
15 investment board by any person when the information relates to the
16 investment of public trust or retirement funds and when disclosure
17 would result in loss to such funds or in private loss to the providers
18 of this information;

19 (7) Financial and valuable trade information under RCW 51.36.120;

20 (8) Financial, commercial, operations, and technical and research
21 information and data submitted to or obtained by the clean Washington
22 center in applications for, or delivery of, program services under
23 chapter 70.95H RCW;

24 (9) Financial and commercial information requested by the public
25 stadium authority from any person or organization that leases or uses
26 the stadium and exhibition center as defined in RCW 36.102.010;

27 (10)(a) Financial information, including but not limited to account
28 numbers and values, and other identification numbers supplied by or on
29 behalf of a person, firm, corporation, limited liability company,
30 partnership, or other entity related to an application for a horse
31 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
32 license, gambling license, or lottery retail license;

33 (b) Internal control documents, independent auditors' reports and
34 financial statements, and supporting documents: (i) Of house-banked
35 social card game licensees required by the gambling commission pursuant
36 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
37 with an approved tribal/state compact for class III gaming;

1 (11) Proprietary data, trade secrets, or other information that
2 relates to: (a) A vendor's unique methods of conducting business; (b)
3 data unique to the product or services of the vendor; or (c)
4 determining prices or rates to be charged for services, submitted by
5 any vendor to the department of social and health services for purposes
6 of the development, acquisition, or implementation of state purchased
7 health care as defined in RCW 41.05.011;

8 (12)(a) When supplied to and in the records of the department of
9 commerce:

10 (i) Financial and proprietary information collected from any person
11 and provided to the department of commerce pursuant to RCW
12 43.330.050(8); and

13 (ii) Financial or proprietary information collected from any person
14 and provided to the department of commerce or the office of the
15 governor in connection with the siting, recruitment, expansion,
16 retention, or relocation of that person's business and until a siting
17 decision is made, identifying information of any person supplying
18 information under this subsection and the locations being considered
19 for siting, relocation, or expansion of a business;

20 (b) When developed by the department of commerce based on
21 information as described in (a)(i) of this subsection, any work product
22 is not exempt from disclosure;

23 (c) For the purposes of this subsection, "siting decision" means
24 the decision to acquire or not to acquire a site;

25 (d) If there is no written contact for a period of sixty days to
26 the department of commerce from a person connected with siting,
27 recruitment, expansion, retention, or relocation of that person's
28 business, information described in (a)(ii) of this subsection will be
29 available to the public under this chapter;

30 (13) Financial and proprietary information submitted to or obtained
31 by the department of ecology or the authority created under chapter
32 70.95N RCW to implement chapter 70.95N RCW;

33 (14) Financial, commercial, operations, and technical and research
34 information and data submitted to or obtained by the life sciences
35 discovery fund authority in applications for, or delivery of, grants
36 under chapter 43.350 RCW, to the extent that such information, if
37 revealed, would reasonably be expected to result in private loss to the
38 providers of this information;

1 (15) Financial and commercial information provided as evidence to
2 the department of licensing as required by RCW 19.112.110 or
3 19.112.120, except information disclosed in aggregate form that does
4 not permit the identification of information related to individual fuel
5 licensees;

6 (16) Any production records, mineral assessments, and trade secrets
7 submitted by a permit holder, mine operator, or landowner to the
8 department of natural resources under RCW 78.44.085;

9 (17)(a) Farm plans developed by conservation districts, unless
10 permission to release the farm plan is granted by the landowner or
11 operator who requested the plan, or the farm plan is used for the
12 application or issuance of a permit;

13 (b) Farm plans developed under chapter 90.48 RCW and not under the
14 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
15 RCW 42.56.610 and 90.64.190;

16 (18) Financial, commercial, operations, and technical and research
17 information and data submitted to or obtained by a health sciences and
18 services authority in applications for, or delivery of, grants under
19 RCW 35.104.010 through 35.104.060, to the extent that such information,
20 if revealed, would reasonably be expected to result in private loss to
21 providers of this information;

22 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
23 that can be identified to a particular business;

24 (20) Financial and commercial information submitted to or obtained
25 by the University of Washington, other than information the university
26 is required to disclose under RCW 28B.20.150, when the information
27 relates to investments in private funds, to the extent that such
28 information, if revealed, would reasonably be expected to result in
29 loss to the University of Washington consolidated endowment fund or to
30 result in private loss to the providers of this information; ~~((and))~~

31 (21) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by innovate Washington in
33 applications for, or delivery of, grants and loans under chapter 43.333
34 RCW, to the extent that such information, if revealed, would reasonably
35 be expected to result in private loss to the providers of this
36 information; and

37 (22) Proprietary information furnished under section 2(1)(c) of
38 this act if so requested by the person providing the information.

1 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 43.330.904 (Transfer of certain state energy office powers,
4 duties, and functions--References to director--Appointment of assistant
5 director) and 1996 c 186 s 101;

6 (2) RCW 43.21F.010 (Legislative findings and declaration) and 2010
7 c 271 s 401 & 1975-'76 2nd ex.s. c 108 s 1;

8 (3) RCW 43.21F.025 (Definitions) and 2010 c 271 s 402;

9 (4) RCW 43.21F.045 (Duties of department--Transfer of powers and
10 duties relating to energy education, applied research, technology
11 transfer, and energy efficiency in public buildings) and 1996 c 186 s
12 103, 1994 c 207 s 4, 1990 c 12 s 2, 1987 c 505 s 29, & 1981 c 295 s 4;

13 (5) RCW 43.21F.055 (Intervention in certain regulatory proceedings
14 prohibited--Application to energy facility site evaluation council--
15 Avoidance of duplication of activity) and 1996 c 186 s 104 & 1981 c 295
16 s 5;

17 (6) RCW 43.21F.060 (Additional duties and authority of department--
18 Obtaining information--Confidentiality, penalty--Receiving and
19 expending funds) and 1996 c 186 s 105, 1981 c 295 s 6, & 1975-'76 2nd
20 ex.s. c 108 s 6;

21 (7) RCW 43.21F.062 (Renewable energy facilities in coastal and
22 estuarine marine waters--Guidance) and 2010 c 145 s 9;

23 (8) RCW 43.21F.088 (State energy strategy--Principles--
24 Implementation) and 2010 c 271 s 403; and

25 (9) RCW 43.21F.090 (State energy strategy--Review and report to
26 legislature) and 1996 c 186 s 106 & 1994 c 207 s 5.

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