CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1768**

Chapter 128, Laws of 2022

67th Legislature

2022 Regular Session

ENERGY CONSERVATION PROJECTS—PUBLIC ENTITIES

EFFECTIVE DATE: June 9, 2022

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| Passed by the House February 10, 2022  Yeas 57 Nays 38  LAURIE JINKINS  **Speaker of the House of Representatives**  Passed by the Senate March 3, 2022  Yeas 29 Nays 18  DENNY HECK  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1768** as passed by the House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved March 24, 2022 8:47 AM | March 24, 2022 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE HOUSE BILL 1768**

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Passed Legislature - 2022 Regular Session

**State of Washington 67th Legislature 2022 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Duerr, Fitzgibbon, Berry, Macri, Ramel, Pollet, and Hackney)

AN ACT Relating to updating definitions applicable to energy conservation projects involving public entities; amending RCW 39.35A.020 and 39.35C.020; reenacting and amending RCW 39.35C.010; adding a new section to chapter 39.35C RCW; and adding a new section to chapter 39.35A RCW.

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

**Sec.**  RCW 39.35C.010 and 2011 1st sp.s. c 43 s 248 are each reenacted and amended to read as follows:

((~~Unless the context clearly requires otherwise, the~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2)(a) "Conservation" ((~~means~~)) includes reduced ((~~energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but~~)):

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b) "Conservation" does not include thermal or electric energy production from cogeneration.

(c) "Conservation" also ((~~means~~)) includes reductions in the use or cost of water, wastewater, or solid waste.

(3) "Cost-effective" means that the present value to a state agency or school district of the ((~~energy~~)) benefits reasonably expected to be ((~~saved~~)) achieved or produced by a facility, conservation activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(7) "Energy efficiency project" means a conservation or cogeneration project.

(8) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(9) "Local utility" means the utility or utilities in whose service territory a public facility is located.

(10) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(11) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(12) "Public facility" means a building ((~~or structure, or a group of buildings or structures at a single site~~)), structure, group of buildings or structures at a single site, site improvement, or other facility owned by a state agency or school district.

(13) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(14) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

**Sec.**  RCW 39.35A.020 and 2007 c 39 s 2 are each amended to read as follows:

((~~Unless the context clearly indicates otherwise, the~~)) The definitions in this section ((~~shall~~)) apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Conservation" includes reduced:

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means ((~~energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies,~~)):

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

((~~(2)~~)) (3) "Energy management system" has the definition provided in RCW 39.35.030.

((~~(3)~~)) (4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

((~~(4)~~)) (6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, ((~~or~~)) solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, ((~~or~~)) solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy.

((~~(5) "Water conservation" means reductions in the use of water or wastewater.~~))

**Sec.**  RCW 39.35C.020 and 2001 c 214 s 21 are each amended to read as follows:

(1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs. Each state agency shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in chapter 43.19 RCW, except that any state agency that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this subsection for those facilities included in the audits and conservation measures. Each school district shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in RCW 39.35C.025. Performance-based contracting shall be the preferred method for completing energy audits and implementing cost-effective conservation measures.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The department, in consultation with affected public agencies, shall develop and issue guidelines for cost-effectiveness determination. The purpose of the guidelines is to define a procedure and method for performance of cost-effectiveness. The department's assistance to state agencies and school districts shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The department shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The department shall enter into a written agreement with the public agency for the recovery of costs.

NEW SECTION. **Sec.**  A new section is added to chapter 39.35C RCW to read as follows:

For purposes of this chapter:

(1) Conservation may be achieved through the deployment of distributed energy resources; and

(2) Distributed energy resources include, but are not limited to, energy efficiency projects that are not cogeneration projects, energy storage, demand response, electric vehicle charging infrastructure, and grid-interactive efficient buildings.

NEW SECTION. **Sec.**  A new section is added to chapter 39.35A RCW to read as follows:

For purposes of this chapter:

(1) Conservation may be achieved through the deployment of distributed energy resources; and

(2) Distributed energy resources include, but are not limited to, energy efficiency projects that are not cogeneration projects, energy storage, demand response, electric vehicle charging infrastructure, and grid-interactive efficient buildings.

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Passed by the House February 10, 2022.

Passed by the Senate March 3, 2022.

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