

Chapter 43.21G RCW
ENERGY SUPPLY EMERGENCIES, ALERTS

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Governor's powers to declare energy emergency, etc.: RCW 43.06.200, 43.06.210.

RCW 43.21G.010 Finding—Intent. The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to institute appropriate emergency measures to regulate the production, distribution, and use of energy, a severe impact on the public health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of such energy shortages or disruptions and their effects is necessary for preservation of the public health, safety, and general welfare of the citizens of this state.

It is the intent of this chapter to:

- (1) Establish necessary emergency powers for the governor and define the situations under which such powers are to be exercised;
- (2) Provide penalties for violations of this chapter.

It is further the intent of the legislature that in developing proposed orders under the powers granted in RCW 43.21G.040 as now or hereafter amended the governor may utilize, on a temporary or ad hoc basis, the knowledge and expertise of persons experienced in the technical aspects of energy supply, distribution, or use. Such utilization shall be in addition to support received by the governor from the department of commerce under RCW 43.21F.045 and *43.21F.065 and from other state agencies. [2023 c 470 § 2038; 1996 c 186 § 507; 1981 c 295 § 11; 1977 ex.s. c 328 § 1; 1975-'76 2nd ex.s. c 108 § 15.]

***Reviser's note:** RCW 43.21F.065 was repealed by 1996 c 186 § 524.

Explanatory statement—2023 c 470: See note following RCW 10.99.030.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Severability—1977 ex.s. c 328: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 328 § 20.]

RCW 43.21G.020 Definitions. As used in this chapter:

(1) "Energy supply facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means any of the following, individually or in combination: Petroleum fuels; other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, joint operating agency or any other entity, public or private, however organized.

(4) "Committee" means the *joint committee on energy and utilities created by RCW 44.39.010 as now or hereafter amended.

(5) "Distributor" means any person, private corporation, partnership, individual proprietorship, utility, including investor-owned utilities, joint operating agencies, municipal utility, public utility district, or cooperative, which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state.

(6) "Regulated distributor" means a public service company as defined in chapter 80.04 RCW which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state.

(7) "Energy supply alert" means a situation which threatens to disrupt or diminish the supply of energy to the extent that the public health, safety, and general welfare may be jeopardized.

(8) "Energy emergency" means a situation in which the unavailability or disruption of the supply of energy poses a clear and foreseeable danger to the public health, safety, and general welfare.

(9) "State or local governmental agency" means any county, city, town, municipal corporation, political subdivision of the state, or state agency. [1977 ex.s. c 328 § 2; 1975-'76 2nd ex.s. c 108 § 16.]

***Reviser's note:** The "joint committee on energy and utilities" was changed to the "joint committee on energy supply" by 2001 c 214 § 30. The "joint committee on energy supply" was changed to the "joint committee on energy supply and energy conservation" by 2005 c 299 § 1.

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.030 Intent in developing energy production, allocation, and consumption programs. It is the intent of the legislature that the governor shall, in developing plans for the production, allocation, and consumption of energy, give high priority to supplying vital public services including, but not limited to, essential governmental operations, public health and safety functions, emergency services, public mass transportation systems, fish

production, food production and processing facilities, including the provision of water to irrigated agriculture, and energy supply facilities, during a condition of energy supply alert or energy emergency. In developing any such plans, provisions should be made for the equitable distribution of energy among the geographic areas of the state.

It is further the intent of the legislature that the governor shall, to the extent possible, encourage and rely upon voluntary programs and local and regional programs for the production, allocation, and consumption of energy and that involvement of energy users and producers be secured in implementing such programs. [1977 ex.s. c 328 § 3; 1975-'76 2nd ex.s. c 108 § 17.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.040 Governor's energy emergency powers—Energy supply alert—Construction of chapter. (1) The governor may subject to the definitions and limitations provided in this chapter:

(a) Upon finding that an energy supply alert exists within this state or any part thereof, declare a condition of energy supply alert; or

(b) Upon finding that an energy emergency exists within this state or any part thereof, declare a condition of energy emergency. A condition of energy emergency shall terminate thirty consecutive days after the declaration of such condition if the legislature is not in session at the time of such declaration and if the governor fails to convene the legislature pursuant to Article III, section 7 of the Constitution of the state of Washington within thirty consecutive days of such declaration. If the legislature is in session or convened, in accordance with this subsection, the duration of the condition of energy emergency shall be limited in accordance with subsection (3) of this section.

Upon the declaration of a condition of energy supply alert or energy emergency, the governor shall present to the committee any proposed plans for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the governor deems desirable. The governor shall review any recommendations of the committee concerning such plans and matters.

Upon the declaration of a condition of energy supply alert or energy emergency, the emergency powers as set forth in this chapter shall become effective only within the area described in the declaration.

(2) A condition of energy supply alert shall terminate ninety consecutive days after the declaration of such condition unless:

(a) Extended by the governor upon issuing a finding that the energy supply alert continues to exist, and with prior approval of such an extension by the committee; or

(b) Extended by the governor based on a declaration by the president of the United States of a national state of emergency in regard to energy supply; or

(c) Upon the request of the governor, extended by declaration of the legislature by concurrent resolution of a continuing energy supply alert.

An initial extension of an energy supply alert approved and implemented under this subsection shall be for a specified period of time not to exceed ninety consecutive days after the expiration of the original declaration. Any subsequent extensions shall be for a specified period of time not to exceed one hundred twenty consecutive days after the expiration of the previous extension.

(3) A condition of energy emergency shall terminate forty-five consecutive days after the declaration of such condition unless:

(a) Extended by the governor upon issuing a finding that the energy emergency continues to exist, and with prior approval of such an extension by the committee; or

(b) Extended by the governor based on a declaration by the president of the United States of a national state of emergency in regard to energy supply; or

(c) Upon the request of the governor, extended by declaration of the legislature by concurrent resolution of a continuing energy emergency.

An initial extension of an energy emergency approved and implemented under this subsection shall be for a specified period of time not to exceed forty-five consecutive days after the expiration of the original declaration. Any subsequent extensions shall be for a specified period of time not to exceed sixty consecutive days after the expiration of the previous extension.

(4) A condition of energy supply alert or energy emergency shall cease to exist upon a declaration to that effect by either of the following: (a) The governor; or (b) the legislature, by concurrent resolution, if in regular or special session: PROVIDED, That the governor shall terminate a condition of energy supply alert or energy emergency when the energy supply situation upon which the declaration of a condition of energy supply alert or energy emergency was based no longer exists.

(5) In a condition of energy supply alert, the governor may, as deemed necessary to preserve and protect the public health, safety, and general welfare, and to minimize, to the fullest extent possible, the injurious economic, social, and environmental consequences of such energy supply alert, issue orders to: (a) Suspend or modify existing rules of the Washington Administrative Code of any state agency relating to the consumption of energy by such agency or to the production of energy, and (b) direct any state or local governmental agency to implement programs relating to the consumption of energy by the agency which have been developed by the governor or the agency and reviewed by the committee.

(6) In addition to the powers in subsection (5) of this section, in a condition of energy emergency, the governor may, as deemed necessary to preserve and protect the public health, safety, and general welfare, and to minimize, to the fullest extent possible, the injurious economic, social, and environmental consequences of such an emergency, issue orders to: (a) Implement programs, controls, standards, and priorities for the production, allocation, and consumption of energy; (b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and (c) establish and implement regional programs and agreements for the purposes of

coordinating the energy programs and actions of the state with those of the federal government and of other states and localities.

(7) The governor shall make a reasonable, good faith effort to provide the committee with notice when the governor is considering declaring a condition of energy supply alert or energy emergency. The governor shall immediately transmit the declaration of a condition of energy supply alert or energy emergency and the findings upon which the declaration is based and any orders issued under the powers granted in this chapter to the committee. The governor shall provide the committee with at least fourteen days' notice when requesting an extension of a condition of energy supply alert or energy emergency, unless such notice is waived by the committee.

(8) Nothing in this chapter shall be construed to mean that any program, control, standard, priority or other policy created under the authority of the emergency powers authorized by this chapter shall have any continuing legal effect after the cessation of the condition of energy supply alert or energy emergency.

(9) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, including, but not limited to, chapter 34.05 RCW, this chapter shall govern and control, and such other law or rule issued thereunder shall be deemed superseded for the purposes of this chapter.

(10) Because of the emergency nature of this chapter, all actions authorized or required hereunder, or taken pursuant to any order issued by the governor, shall be exempted from any and all requirements and provisions of the state environmental policy act of 1971, chapter 43.21C RCW, including, but not limited to, the requirement for environmental impact statements.

(11) Except as provided in this section nothing in this chapter shall exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor. [2002 c 192 § 2; 1987 c 505 § 83; 1985 c 308 § 1; 1981 c 281 § 1; 1980 c 87 § 23; 1979 ex.s. c 158 § 1; 1977 ex.s. c 328 § 4; 1975-'76 2nd ex.s. c 108 § 18.]

Effective date—1985 c 308: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 29, 1985." [1985 c 308 § 2.]

Severability—1981 c 281: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 281 § 3.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.050 Duty of executive authority of state and local governmental agencies to carry out supply alert or emergency measures—Liability for actions. To protect the public welfare during a condition of energy supply alert or energy emergency, the executive authority of each state or local governmental agency is hereby authorized and directed to take action to carry out the orders issued

by the governor pursuant to this chapter as now or hereafter amended. A local governmental agency shall not be liable for any lawful actions consistent with RCW 43.21G.030 as now or hereafter amended taken in good faith in accordance with such orders issued by the governor. [1981 c 281 § 2; 1977 ex.s. c 328 § 5; 1975-'76 2nd ex.s. c 108 § 19.]

Severability—1981 c 281: See note following RCW 43.21G.040.

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.060 Consideration of actions, orders, etc., of federal authorities. In order to attain uniformity, as far as is practicable throughout the United States, in measures taken to aid in energy crisis management, all action taken under this chapter as now or hereafter amended, and all orders and rules made pursuant hereto, shall be taken or made with due consideration for and consistent when practicable with the orders, rules, regulations, actions, recommendations, and requests of federal authorities. [1977 ex.s. c 328 § 6; 1975-'76 2nd ex.s. c 108 § 20.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.070 Compliance by affected persons. Notwithstanding any provision of law or contract to the contrary, all persons who are affected by an order issued or action taken pursuant to this chapter as now or hereafter amended shall comply therewith immediately. [1977 ex.s. c 328 § 7; 1975-'76 2nd ex.s. c 108 § 21.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.080 Compliance by distributors—Fair and just reimbursement. The governor may order any distributor to take such action on his or her behalf as may be required to implement orders issued pursuant to this chapter as now or hereafter amended: PROVIDED, That orders to regulated distributors shall be issued by the Washington utilities and transportation commission in conformance with orders of the governor. No distributor shall be liable for actions taken in accordance with such orders issued by the governor or the Washington utilities and transportation commission.

All allocations of energy from one distributor to another distributor pursuant to orders issued or as a result of actions taken under this chapter as now or hereafter amended are subject to fair and just reimbursement. Such reimbursement for any allocation of energy between regulated distributors shall be subject to the approval of the Washington utilities and transportation commission. A distributor is authorized to enter into agreements with another distributor for the purpose of determining financial or commodity reimbursement. [2009 c 549 § 5099; 1977 ex.s. c 328 § 8; 1975-'76 2nd ex.s. c 108 § 22.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.090 Petition for exception or modification—Appeals.

(1) Any person aggrieved by an order issued or action taken pursuant to this chapter as now or hereafter amended may petition the governor and request an exception from or modification of such order or action. The governor may grant, modify, or deny such petition as the public interest may require.

(2) An appeal from any order issued or action taken pursuant to this chapter as now or hereafter amended may be taken to the state supreme court. Such an appeal shall take the form of a petition for a writ of mandamus or prohibition under Article IV, section 4 of the state Constitution, and the supreme court shall have exclusive jurisdiction to hear and act upon such an appeal. Notwithstanding the provisions of chapter 7.16 RCW, or any other applicable statute, the superior courts of this state shall have no jurisdiction to entertain an action or suit relating to any order issued or action taken pursuant to this chapter as now or hereafter amended, nor to hear and determine any appeal from any such order. The provisions of Rule 16.2, Rules of Appellate Procedure, shall apply to any proceedings in the supreme court brought pursuant to this chapter as now or hereafter amended. [1977 ex.s. c 328 § 9; 1975-'76 2nd ex.s. c 108 § 23.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

RCW 43.21G.100 Penalty. Any person wilfully violating any provision of an order issued by the governor pursuant to this chapter shall be guilty of a gross misdemeanor. [1975-'76 2nd ex.s. c 108 § 24.]

RCW 43.21G.900 Severability—Effective date—1975-'76 2nd ex.s. c 108. See notes following RCW 43.21F.010.