

# SENATE BILL REPORT

## SB 6658

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As Reported By Senate Committee On:  
Environment, Energy & Water, February 7, 2002

**Title:** An act relating to clarifying the types of energy conservation projects a public utility may assist its customers in financing.

**Brief Description:** Clarifying the types of energy conservation projects a public utility may assist its customers in financing.

**Sponsors:** Senators Poulsen, Hale, Regala, Morton, Fraser, Keiser and Rasmussen.

**Brief History:**

**Committee Activity:** Environment, Energy & Water: 2/5/02, 2/7/02 [DPS].

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

**Majority Report:** That Substitute Senate Bill No. 6658 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, Keiser, McDonald and Morton.

**Staff:** Andrea McNamara (786-7483)

**Background:** In September 2001, the Attorney General issued an opinion (AGO 2001, No. 7) interpreting a provision of the State Constitution and public utility codes related to public financing of energy conservation measures.

Article VIII, Section 10 of the Washington State Constitution, which was originally enacted in 1979, and amended in 1988, states in relevant part:

"... any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of water, energy, or stormwater or sewer services may, as authorized by the legislature, use public moneys or credit derived from operating revenues ... to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of ... energy ... Any financing for energy conservation authorized by this article shall not be used for any purpose which results in a conversion from one energy source to another."

The Legislature has incorporated identical language from this constitutional provision into both the municipal utility code and the public utility district code. In addition, the Legislature has outlined a number of additional parameters for the implementation of the conservation loan financing programs, including contracting-out provisions and pay-back terms and methods.

The Attorney General's Opinion sought to answer the question of whether certain types of conservation measures would result in the "conversion of one energy source to another" such that a Public Utility District (PUD) would be prohibited from financing them through their conservation loan financing programs.

The opinion states, in relevant part:

"Thus, we believe the better interpretation of article VIII, section 10 is that a PUD cannot offer customers loans to switch from using energy supplied by the PUD to energy supplied by another source, including energy generation facilities installed by the customer. Nor can a PUD provide financing for materials or equipment that would result in a change of the kind of energy used--for example, from electricity to another kind of energy." (Emphasis added)

**Summary of Substitute Bill:** Legislative findings and intent are stated relating to the broad array of energy conservation opportunities available and the desire to support public financing of projects that allow customers to generate their own electricity.

A definition of allowable conservation purposes is added to the municipal utility code and the public utility district code for the purpose of clarifying the types of projects public utilities may assist their customers in financing.

The definition includes projects that allow a public utility's customers to generate all or a portion of their own electricity through on-site installation of solar, wind, geothermal, or mini-hydroelectric generating systems, or other distributable generation systems that use fuel from on-site renewable resources.

The projects may not be considered a "conversion from one energy source to another" as prohibited by law and the State Constitution, so long as they do not involve the substitution of one retail energy supplier for another retail energy supplier.

**Substitute Bill Compared to Original Bill:** The substitute also allows other distributed electricity generating systems that use fuel from on-site renewable resources (not from commercial sources). It clarifies that "conversion from one energy source to another" is limited to those circumstances where there is a substitution of one retail energy supplier for another retail supplier. The substitute also corrects an erroneous reference to "municipal utility" in the PUD code.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** There are many reasons why public utilities would want to encourage and help their customers install on-site renewables: they can reduce the load on the utility; they can allow the utility to buy back excess generation at an affordable cost; and they can provide a hedge against very volatile fuel costs. Public utilities should have the same flexibility as private utilities to keep up with new technologies and new forms of conservation. The intent

of the original constitutional and statutory provision was to prevent public utilities from using public funds to buy customers from other utilities (e.g., converting gas customers to electric customers or vice versa). About 80 percent of the state's wind energy potential is located on land in PUD service territory. Many utilities are interested in helping their customers pursue both wind and solar projects, and the AG's opinion caused at least one PUD to shut down an existing geothermal program.

**Testimony Against:** None.

**Testified:** PRO: Sen. Erik Poulsen, prime sponsor; Al Aldrich, Snohomish PUD, Stu Trefry, WA PUD Association; Dave Warren, Last Mile Electric Cooperative; Mike Nelson, Western SUN Cooperative; Collins Sprague, Avista; Heather Rhoads-Weaver, NW Seed.