CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5245

Chapter 201, Laws of 1991

52nd Legislature
1991 Regular Session

STATE ENERGY POLICY

EFFECTIVE DATE: 7/28/91

Passed by the Senate April 16, 1991
Yeas 40 Nays 8

JOEL PRITCHARD
President of the Senate

Passed by the House April 19, 1991
Yeas 97 Nays 0

JOE KING
Speaker of the House of Representatives

Approved May 15, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5245** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 15, 1991 - 2:25 a.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5245

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Thorsness, Sutherland, Williams, Jesernig, Stratton, Bauer and Conner; by request of Governor Gardner).

Read first time March 5, 1991.

AN ACT Relating to state energy policy; amending RCW 39.35.030 and 43.88.195; amending 1989 1st ex.s. c 12 s 301 (uncodified); adding a new section to chapter 43.21F RCW; adding new sections to chapter 39.35 RCW; adding a new chapter to Title 39 RCW; adding a new section to Title 28A RCW; creating a new section; and repealing 1982 c 159 s 6 (uncodified).

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21F RCW to read as follows:

DEVELOPMENT OF STATE ENERGY STRATEGY. (1) The state energy office shall develop a state energy strategy under the guidance of an advisory committee. The advisory committee shall include twenty members and represent different regions of the state, including fifteen citizens appointed by the governor from the following groups: One person recommended by the investor-owned electric utilities, one person

recommended by the investor-owned natural gas utilities, one person employed by or recommended by a natural gas pipeline serving the state, one person recommended by the suppliers of petroleum products, one person recommended by municipally owned electric utilities, one person recommended by the public utility districts, one person recommended by industrial energy users, one person recommended by commercial energy users, one person recommended by agricultural energy users, one person recommended by the association of Washington cities, one person recommended by the Washington association of counties, two persons recommended by civic organizations, and two persons recommended by environmental organizations. In addition, the advisory committee shall include one of the representatives of the state of Washington to the Pacific Northwest electric power and conservation planning council selected by the governor; the chair of the energy facility site evaluation council; one member of the utilities and transportation commission selected by the chair of the commission; one member of the house of representatives selected by the speaker of the house of representatives; and one member of the senate selected by the majority leader of the senate. The chair of the advisory committee will be appointed by the governor from citizen members. The director may establish technical advisory groups as necessary to assist in the development of the strategy. The director shall provide for extensive public involvement throughout the development of the strategy.

(2) The state energy strategy shall consider all forms of energy and each major sector of energy consumption and shall:

(a) Assess future needs of the state and future resources available for use in the state for each form of energy;

(b) Identify measures to assist in maintaining adequate, reliable, secure, economic, and environmentally acceptable supplies;

(c) Identify and, to the extent possible, quantify the costs and benefits of energy alternatives including direct economic costs and benefits, environmental costs and benefits, and the costs of inadequate or unreliable energy supplies;

(d) Develop a framework in which public decisions and actions affecting energy supply and use can be evaluated including the impact of decisions in other areas of public policy on energy supply and cost and on the use of energy and the establishment of goals to guide energy-related decisions;

(e) Evaluate the future role of the state energy office and means of financing those activities determined essential to that role; and

(f) Recommend energy goals and policies to the governor and the legislature.

(3) In developing the state energy strategy, the state energy office shall:

(a) Ensure that the information developed is objective and impartial and facilitates the effective and efficient operation of such energy markets as may exist and recognizes and conforms to the pattern of regulation governing public service companies but shall not mandate the use of one energy source over another;

(b) Draw upon existing public and private sector information and expertise in energy matters to the fullest extent possible through consultation and cooperation;

(c) Recognize the planning horizons required for each segment of the energy industry and the need for state actions and decisions to take those planning horizons into consideration; and

(d) Ensure that the strategy is coordinated with the energy planning activities of federal, state, and private entities and does not duplicate what is already available.

(4) The energy office shall provide a progress report to the house of representatives and senate committees on energy and utilities in January 1992. A final report shall be provided to the governor and the legislature by December 1, 1992.

NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, 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) "Energy" means energy as defined in RCW 43.21F.025(1).

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

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

(7) "Energy office" means the Washington state energy office.

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

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

(10) "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.

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

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

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

NEW SECTION. **Sec. 3.** CONSERVATION PROJECTS: ROLES AND RESPONSIBILITIES. (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.

(2) The energy office shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective

conservation projects at their facilities. The assistance 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 energy office 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 energy office shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The energy office 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 energy office shall enter into a written agreement with the state agency or school district for the recovery of costs.

NEW SECTION. **Sec. 4.** COORDINATION OF CONSERVATION DEVELOPMENT WITH UTILITIES. (1) The energy office shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing

utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the energy office shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the energy office anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the energy office a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the energy office shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in

roles that the local utility is willing to perform and that are consistent with the provisions of section 5(2) (d) and (e) of this act.

NEW SECTION. **Sec. 5.** SALE OF CONSERVED ENERGY. (1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the bonneville power administration intended to achieve reductions or efficiencies in energy use which are cost-effective to the utility or the bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The energy office shall, in coordination with utilities, the bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the bonneville power administration. The energy office shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both the energy office and the state agency or school district.

(b) The energy office and the state agency or school district shall work together throughout the planning and negotiation process for such transactions unless the energy office determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the energy office shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the energy office determines to be prudent.

(d) The energy office shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the bonneville power administration has a program for the purchase of energy savings at public facilities, the energy office shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the energy office shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and

any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2) (c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

NEW SECTION. **Sec. 6.** AUTHORITIES OF STATE AGENCIES AND SCHOOL DISTRICTS TO IMPLEMENT CONSERVATION. In addition to any other authorities conferred by law:

(1) The energy office, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts; and

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may undertake

procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the bonneville power administration directly or to local utilities or the bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of section 5 of this act.

NEW SECTION. **Sec. 7.** AUTHORITY TO FINANCE CONSERVATION IN SCHOOL DISTRICTS AND STATE AGENCIES. (1) The energy office, in accordance with RCW 43.21F.060(2) may use appropriated moneys to make loans to school districts to provide all or part of the financing for conservation projects. The energy office shall determine the eligibility of such projects for conservation loans and the terms of such loans. If loans are from moneys appropriated from bond proceeds, the repayments of the loans shall be sufficient to pay, when due, the principal and interest on the bonds and shall be paid to the energy efficiency construction account established in section 11 of this act. To the extent that a school district applies the proceeds of such loans to a modernization or new construction project, such proceeds shall be considered a portion of the school district's share of the costs of such project.

(2) State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects.

The energy office shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts.

NEW SECTION. **Sec. 8.** ROLES AND RESPONSIBILITIES OF COGENERATION PROJECTS WITH UTILITIES AND PRIVATE DEVELOPERS. (1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate and, if appropriate, pursue development of cost-effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the energy office shall notify state agencies of their responsibilities under this chapter; apprise them of opportunities to develop and finance such projects; and provide technical and analytical support. The energy office shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The energy office shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the energy office and the appropriate state agency, the energy office shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The energy office shall consult with the local utility and provide the local utility an opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the energy office and the state

agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The energy office, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the energy office and the appropriate state agency. The energy office, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in the cogeneration project through energy purchase, project development or ownership, recovery of the utility’s costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the energy office and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of electricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the energy office and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the energy office and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the

acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The energy office may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the energy office and the state agency may consider such factors as technical knowledge, experience, management, staff, or schedule, as may be necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

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

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be cost-effective, based on the findings of the feasibility study, the energy office and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the energy office and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the energy office shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over the useful life of the project. The principal purpose and use of such projects is

to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the energy office shall seek and obtain legislative appropriation and approval for development. Nothing in this act shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the energy office and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility.

NEW SECTION. **Sec. 9.** SALE OF COGENERATED ELECTRICITY AND STEAM.

It is the intention of this act that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the

facility. It is also the intent of this act that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The energy office and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the energy office and the affected state agency.

(b) The energy office and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the energy office determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the energy office shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the energy office deems prudent. The energy office shall approve an energy purchase agreement unless it finds that such an

agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in this act shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in this act authorizes any state agency or school district to make any sale of energy or waste heat as defined by RCW 80.62.020(9) beyond the explicit provisions of this act. Nothing contained in this act requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the energy office or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

NEW SECTION. **Sec. 10.** AUTHORITIES RELATED TO COGENERATION AT STATE AGENCIES. In addition to any other authorities conferred by law:

(1) The energy office, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After the effective date of this section, a state agency shall consult with the energy office prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of section 9 of this act.

NEW SECTION. **Sec. 11.** ENERGY EFFICIENCY CONSTRUCTION ACCOUNT.

(1) The energy efficiency construction account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation and only for the following purposes:

(a) Construction of energy efficiency projects, including project evaluation and verification of benefits, project design, project development, project construction, and project administration.

(b) Payment of principal and interest and other costs required under bond covenant on bonds issued for the purpose of (a) of this subsection.

(2) Sources for this account may include:

(a) General obligation and revenue bond proceeds appropriated by the legislature;

(b) Loan repayments under section 7 of this act sufficient to pay principal and interest obligations; and

(c) Funding from federal, state, and local agencies.

(3) The energy office shall establish criteria for approving energy efficiency projects to be financed from moneys disbursed from this account. The criteria shall include cost-effectiveness, reliability of energy systems, and environmental costs or benefits. The energy office shall ensure that the criteria are applied with professional standards for engineering and review.

NEW SECTION. **Sec. 12.** ENERGY EFFICIENCY SERVICES ACCOUNT. (1) The energy efficiency services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only (a) for the energy office to provide energy efficiency services to state agencies and school districts including review of life-cycle cost analyses and (b) for transfer by the legislature to the state general fund.

(2) All receipts from the following sources shall be deposited into the account:

(a) Project fees charged under this section and sections 3, 8, and 16 of this act;

(b) After payment of any principal and interest obligations, moneys from repayments of loans under section 7 of this act;

(c) Revenue from sales of energy generated or saved at public facilities under this chapter, except those retained by state agencies and school districts under section 13 of this act; and

(d) Payments by utilities and federal power marketing agencies under this chapter, except those retained by state agencies and school districts under section 13 of this act.

(3) The energy office may accept moneys and make deposits to the account from federal, state, or local government agencies.

(4) Within one hundred eighty days after the effective date of this act, the energy office shall adopt rules establishing criteria and procedures for setting a fee schedule, establishing working capital requirements, and receiving deposits for this account.

NEW SECTION. **Sec. 13.** PROJECT BENEFITS. (1) Potential benefits from energy efficiency projects at public facilities include savings in the form of reduced energy costs; revenues from lease payments, sales of energy or energy savings, or other sources; avoided capital costs; site enhancements; and additional operating and maintenance resources.

(2) To encourage these projects at state facilities, and notwithstanding any other provision of law, the following benefits from energy efficiency projects completed after the effective date of this chapter shall be apportioned as specified:

(a) As to conservation, state agencies may retain all net savings in the form of reduced energy costs, and one-half of all net revenues from any transaction with a utility, the bonneville power administration, or other entity. The net savings shall be retained by the local administrative body responsible for the public facility;

(b) As to cogeneration projects, state agencies may retain one-half of all net savings in the form of reduced energy costs and twenty percent of all net revenues generated by the project from any source except that state institutions of higher education may retain one-half of all net revenues generated by the project; and

(c) The remaining net revenues from conservation projects, and remaining net savings and revenues from cogeneration projects, shall be

remitted to the state for the disposition and uses specified in subsection (4) of this section.

(3) Each state agency's share of net savings from cogeneration projects and of all net revenues shall be credited to a special local account created under section 18 of this act, the use of which shall be limited, in priority order, to ongoing operation, maintenance, and improvements of energy systems and energy efficiency measures, to other ongoing and deferred maintenance, and to other infrastructure improvements at the facility that was the site of the energy efficiency project.

(4) The state's share of net savings from cogeneration projects and of all net revenues, and any portion of the state agency's share which exceeds its needs for the purposes specified in subsection (3) of this section, shall be deposited in the energy efficiency services account established by section 12 of this act.

(5) The use by state agencies of net savings and net revenues from energy efficiency projects shall be in addition to, and shall not supplant or replace, funding from traditional sources for their normal operations and maintenance or capital budgets. It is the intent of this subsection to ensure that such institutions receive the full benefit intended by this section, and that such effect will not be diminished by budget adjustments inconsistent with this intent.

(6) Energy efficiency projects in school districts, funded in whole or in part with state assistance provided under chapter 28A.525 RCW, or with the financing mechanisms authorized by this chapter, shall be subject to the provisions of this section governing the apportionment and use of savings and revenues from energy efficiency projects.

(7) For purposes of this section, "net" savings and revenues shall mean savings and revenues remaining after payment of project capital costs, including debt service, and other payments and reserves as

required by a bond resolution or loan agreement under this chapter, and payment of project operating and maintenance expenses. The energy office shall develop guidelines and procedures for determining net savings and net revenues for energy efficiency projects at public facilities by April 1, 1992.

(8) The energy office shall report annually until the year 2006 to the director of the office of financial management and the chairs of the senate ways and means committee and the appropriate house of representatives fiscal committees a full and complete financial accounting for energy efficiency projects undertaken pursuant to this act, including but not limited to a description of the project, its location and sponsoring agency or school district, date of completion or, if not completed, status of construction, the amount of investment in and expenditures on the project, the amount of revenues received from the project and estimated savings, if any, during the past year, estimated revenues, expenditures, and investments for the ensuing five years, the useful life originally estimated for the project, and the useful life of the project estimated to remain as of the date of the report, and the amount of savings and revenues from energy conservation and cogeneration retained by individual state agencies.

Sec. 14. RCW 39.35.030 and 1982 c 159 s 3 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

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

(2) "Office" means the Washington state energy office.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the ((~~state finance committee~~)) office of financial management. The energy cost((~~s~~)) projections used shall be those ((~~projected~~)) provided by the state energy office. The office shall update ((~~the~~)) these projections ((~~of energy costs~~)) at least every two years.

(8) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(9) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(10) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(11) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, ((~~cogenerated energy,~~)) photovoltaic devices, and geothermal energy.

(12) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where 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. 292.202 (c) through (m) as of the effective date of this act shall apply.

NEW SECTION. **Sec. 15.** A new section is added to chapter 39.35 RCW to read as follows:

GUIDELINES FOR LIFE-CYCLE COST ANALYSIS. The office, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including renewable energy systems and cogeneration applications prior to commencing the energy consumption analysis;

(3) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(4) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(5) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of this act;

(6) Provide for review and approval of life-cycle cost analysis.

NEW SECTION. **Sec. 16.** A new section is added to chapter 39.35 RCW to read as follows:

LIFE-CYCLE COST ANALYSIS REVIEW FEES. The energy office may impose fees upon affected public agencies for the review of life-cycle

cost analyses. The fees shall be deposited in the energy efficiency services account established in section 12 of this act. The purpose of the fees is to recover the costs by the office for review of the analyses. The office shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The office shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review.

NEW SECTION. **Sec. 17.** ADOPTION OF RULES. The energy office may adopt rules to implement sections 3 through 5, 8, 9, 13, and 15 of this act.

NEW SECTION. **Sec. 18.** A new section is added to Title 28A RCW to read as follows:

The office of the superintendent of public instruction shall report annually to the energy and utilities committees of the house of representatives and the senate regarding the effects of this act on school districts throughout the state.

Sec. 19. RCW 43.88.195 and 1979 c 151 s 140 are each amended to read as follows:

After August 11, 1969, no state agency, state institution, state institution of higher education, which shall include all state universities, regional universities, The Evergreen State College, and community colleges, shall establish any new accounts or funds which are to be located outside of the state treasury: PROVIDED, That the office

of financial management shall be authorized to grant permission for the establishment of such an account or fund outside of the state treasury only when the requesting agency presents compelling reasons of economy and efficiency which could not be achieved by placing such funds in the state treasury. When the director of financial management authorizes the creation of such fund or account, ((~~he~~)) the director shall forthwith give written notice of the fact to the standing committees on ways and means of the house and senate: PROVIDED FURTHER, That the office of financial management may grant permission for the establishment of accounts outside of the state treasury for the purposes of section 13 of this act.

Sec. 20. 1989 1st ex.s. c 12 s 301 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE ENERGY OFFICE

Energy conservation projects (90-4-001)

The appropriation in this section is subject to the following conditions and limitations: The department shall contract with the following agencies for the amounts specified to undertake energy conservation projects. Each contract shall require the agencies listed below to deposit into the energy ((~~conservation account, hereby created in the state treasury~~)) efficiency services account, created in section 12 of this act, an amount equal to the contract amount. The payback period for the contracted amount shall be determined by the department, but shall not exceed six years.

(1) No more than $1,033,000 shall be expended for energy conservation projects for Military Department facilities;

(2) No more than $361,600 shall be expended for energy conservation projects for the department of social and health services;

(3) No more than $552,000 shall be expended for energy conservation projects for The Evergreen State College.

	Reappropriation	Appropriation
St Bldg Constr Acct		1,946,600
Prior Biennia	Future Biennia	Total
	2,199,000	4,145,600

NEW SECTION. **Sec. 21.** CODIFICATION INSTRUCTIONS. Sections 2 through 13 and 17 of this act shall constitute a new chapter in Title 39 RCW.

NEW SECTION. **Sec. 22.** CAPTIONS NOT LAW. Captions as used in this act constitute no part of the law.

NEW SECTION. **Sec. 23.** REPEALER. 1982 c 159 s 6 (uncodified) is repealed.

NEW SECTION. **Sec. 24.** SEVERABILITY CLAUSE. 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.

Passed the Senate April 16, 1991.
Passed the House April 19, 1991.
Approved by the Governor May 15, 1991.
Filed in Office of Secretary of State May 15, 1991.