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ENGROSSED SUBSTITUTE SENATE BILL 6501

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State of Washington

59th Legislature

2006 Regular Session

**By** Senate Committee on Water, Energy & Environment (originally sponsored by Senators Rockefeller, Poulsen, Morton, Honeyford, Fraser, Regala, Kohl-Welles, Rasmussen, Kline and Keiser; by request of Governor Gregoire)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to the creation of the Washington bioenergy  
2 assistance program; amending RCW 42.56.270; reenacting and amending RCW  
3 43.84.092; adding a new chapter to Title 15 RCW; providing an effective  
4 date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Washington's dependence on energy supplied from outside the  
8 state and volatile global energy markets makes its economy and citizens  
9 vulnerable to unpredictable and high energy prices;

10 (2) Washington's dependence on petroleum-based fuels increases  
11 energy costs for citizens and businesses;

12 (3) Diesel soot from diesel engines ranks as the highest toxic air  
13 pollutant in Washington, leading to hundreds of premature deaths and  
14 increasing rates of asthmas and other lung diseases;

15 (4) The use of biodiesel results in significantly less air  
16 pollution than traditional diesel fuels;

17 (5) Improper disposal and treatment of organic waste from farms and  
18 livestock operations can have a significant negative impact on water  
19 quality;

1 (6) Washington has abundant supplies of organic wastes from farms  
2 that can be used for energy production and abundant farmland where  
3 crops could be grown to supplement or supplant petroleum-based fuels;

4 (7) The use of energy and fuel derived from these sources can help  
5 citizens and business conserve energy and reduce the use of petroleum-  
6 based fuels, would improve air and water quality in Washington, reduce  
7 environmental risks from farm wastes, create new markets for farm  
8 products, and provide new industries and jobs for Washington citizens;  
9 and

10 (8) The bioenergy industry is a new and developing industry that  
11 is, in part, limited by the availability of capital for the  
12 construction of facilities for converting farm and forest products into  
13 energy and fuels.

14 Therefore, the legislature finds that it is in the public interest  
15 to encourage the rapid adoption and use of bioenergy, to develop a  
16 viable bioenergy industry within Washington state, and to support a  
17 viable agriculture industry to grow bioenergy crops. To accomplish  
18 this, the Washington bioenergy assistance program is established to  
19 stimulate the construction of facilities in Washington to generate  
20 energy from farm sources or convert organic matter into fuels.

21 NEW SECTION. **Sec. 2.** The definitions in this section apply  
22 throughout this chapter unless the context clearly requires otherwise.

23 (1) "Assistance" includes loans, leases, product purchases, or  
24 other forms of financial or technical assistance.

25 (2) "Department" means the department of agriculture.

26 (3) "Director" means the director of the department of agriculture.

27 (4) "Political subdivision" means any port district, county, city,  
28 town, special purpose district, and any other municipal corporation or  
29 quasi-municipal corporation in the state.

30 (5) "Project" means the construction of facilities, including the  
31 purchase of equipment, to convert farm products or wastes into  
32 electricity or gaseous and liquid fuels. These specifically include  
33 facilities to generate electricity or methane from the anaerobic  
34 digestion of organic matter, and facilities for the extracting oils  
35 from canola, rape, mustard, and other oilseeds. "Project" may also  
36 include the construction of facilities used to distribute and store  
37 fuels that are produced from farm products or wastes.

1        NEW SECTION.    **Sec. 3.** (1) A bioenergy assistance program is  
2 established within the department. The director, in cooperation with  
3 the department of community, trade, and economic development, may  
4 approve an application providing assistance for a project only if the  
5 director finds:

6        (a) The project will convert farm products or wastes directly into  
7 electricity or into gaseous or liquid fuels;

8        (b) The project demonstrates technical feasibility and probable  
9 business success;

10       (c) The business or facility produces long-term economic benefits  
11 to the state, a region of the state, or a particular community in the  
12 state;

13       (d) The project does not require continuing state support;

14       (e) The assistance will result in new jobs, job retention, or  
15 higher incomes for citizens of the state;

16       (f) The assistance is accompanied by private investment;

17       (g) The state is provided an option under the assistance agreement  
18 to purchase a portion of the fuel or feedstock to be produced by the  
19 project, exercisable by the department of general administration;

20       (h) The project will increase energy independence or diversity for  
21 the state;

22       (i) The project will use feed stocks produced in the state, if  
23 feasible, except this criterion shall not apply to the construction of  
24 facilities used to distribute and store fuels that are produced from  
25 farm products or wastes;

26       (j) Any product produced by the project will be suitable for its  
27 intended use, will meet accepted national or state standards, and will  
28 be stored and distributed in a safe and environmentally sound manner;

29       (k) The application provides for adequate reporting or disclosure  
30 of financial and employment data to the director, and permits the  
31 director to require an annual or other periodic audit of the project  
32 books; and

33       (1) For applications seeking direct financial assistance, the  
34 applicant is unable to secure adequate financing from other sources.

35       (2) The director may approve an application for assistance up to  
36 five million dollars.

37       (3) The director shall enter into agreements with approved  
38 applicants to fix the terms and rates of the assistance to minimize the

1 costs to the applicants, and to encourage establishment of a viable  
2 bioenergy industry. The agreement shall include provisions to protect  
3 the state's investment, taking into account depreciation and other  
4 circumstances or market conditions. In the event the department of  
5 general administration coordinates a biodiesel technical assistance  
6 team, the agreement shall incorporate the appropriate best management  
7 practices developed by the team.

8 (4) The director may defer any payments for up to twelve months or  
9 until the project starts to receive revenue from operations, whichever  
10 is sooner.

11 (5) Political subdivisions and private entities, including economic  
12 development councils, may participate in the program.

13 NEW SECTION. **Sec. 4.** (1) The director may establish policies and  
14 procedures necessary for processing, reviewing, and approving  
15 applications made under this section.

16 (2) Each application must show in detail the nature of the project,  
17 the source of the feedstock, and the technologies that will be used.  
18 Each application must contain a credit analysis of the applicant and a  
19 detailed feasibility analysis and business plan.

20 (3) The director shall consult with those agencies having expertise  
21 and knowledge to assess the technical and business feasibility of the  
22 project and probability of success. These agencies may include, but  
23 are not limited to, Washington State University, the University of  
24 Washington, the department of ecology, the department of community,  
25 trade, and economic development, and the Washington state conservation  
26 commission.

27 (4) If the total requested dollar amount of assistance exceeds the  
28 amount available in the Washington bioenergy assistance account created  
29 in section 5 of this act, the applications must be prioritized based  
30 upon the following criteria:

31 (a) The extent to which the project will help conserve energy and  
32 reduce dependence on petroleum fuels and imported energy either  
33 directly or indirectly;

34 (b) The extent to which the project will reduce air and water  
35 pollution either directly or indirectly;

36 (c) The extent to which the project will establish a viable  
37 bioenergy production capacity in Washington;

- 1 (d) The benefits to Washington's agriculture producers; and  
2 (e) The number and quality of jobs and economic benefits created by  
3 the project.

4 NEW SECTION. **Sec. 5.** The Washington bioenergy assistance account  
5 is created in the state treasury. All receipts from appropriations  
6 made to the account and any loan payments of principal and interest  
7 derived from loans made under this chapter must be deposited into the  
8 account. Moneys in the account may be spent only after appropriation.  
9 Expenditures from the account may be used only for assistance for  
10 projects consistent with this chapter. Administrative costs of the  
11 department may not exceed three percent of the total funds available  
12 for this program.

13 NEW SECTION. **Sec. 6.** The director shall report to the legislature  
14 and governor on the status of the Washington bioenergy assistance  
15 program created under this chapter, on or before December 1st of the  
16 years 2006, 2007, and 2009. This report must include information on  
17 the projects that have been funded, the status of these projects, and  
18 their environmental, energy savings, and job creation benefits.

19 **Sec. 7.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to  
20 read as follows:

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

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

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

32 (3) Financial and commercial information and records supplied by  
33 private persons pertaining to export services provided under chapters  
34 43.163 and 53.31 RCW, and by persons pertaining to export projects  
35 under RCW 43.23.035;

1 (4) Financial and commercial information and records supplied by  
2 businesses or individuals during application for loans or program  
3 services provided by chapters 43.-- (sections 1 through 6, 9, and 10 of  
4 this act), 43.163, 43.160, 43.330, and 43.168 RCW, or during  
5 application for economic development loans or program services provided  
6 by any local agency;

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

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

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

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

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

24 (10) Financial information, including but not limited to account  
25 numbers and values, and other identification numbers supplied by or on  
26 behalf of a person, firm, corporation, limited liability company,  
27 partnership, or other entity related to an application for a liquor  
28 license, gambling license, or lottery retail license;

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

36 (12)(a) When supplied to and in the records of the department of  
37 community, trade, and economic development:

1 (i) Financial and proprietary information collected from any person  
2 and provided to the department of community, trade, and economic  
3 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

4 (ii) Financial or proprietary information collected from any person  
5 and provided to the department of community, trade, and economic  
6 development or the office of the governor in connection with the  
7 siting, recruitment, expansion, retention, or relocation of that  
8 person's business and until a siting decision is made, identifying  
9 information of any person supplying information under this subsection  
10 and the locations being considered for siting, relocation, or expansion  
11 of a business;

12 (b) When developed by the department of community, trade, and  
13 economic development based on information as described in (a)(i) of  
14 this subsection, any work product is not exempt from disclosure;

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

17 (d) If there is no written contact for a period of sixty days to  
18 the department of community, trade, and economic development from a  
19 person connected with siting, recruitment, expansion, retention, or  
20 relocation of that person's business, information described in (a)(ii)  
21 of this subsection will be available to the public under this chapter.

22 **Sec. 8.** RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005  
23 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are  
24 each reenacted and amended to read as follows:

25 (1) All earnings of investments of surplus balances in the state  
26 treasury shall be deposited to the treasury income account, which  
27 account is hereby established in the state treasury.

28 (2) The treasury income account shall be utilized to pay or receive  
29 funds associated with federal programs as required by the federal cash  
30 management improvement act of 1990. The treasury income account is  
31 subject in all respects to chapter 43.88 RCW, but no appropriation is  
32 required for refunds or allocations of interest earnings required by  
33 the cash management improvement act. Refunds of interest to the  
34 federal treasury required under the cash management improvement act  
35 fall under RCW 43.88.180 and shall not require appropriation. The  
36 office of financial management shall determine the amounts due to or  
37 from the federal government pursuant to the cash management improvement

1 act. The office of financial management may direct transfers of funds  
2 between accounts as deemed necessary to implement the provisions of the  
3 cash management improvement act, and this subsection. Refunds or  
4 allocations shall occur prior to the distributions of earnings set  
5 forth in subsection (4) of this section.

6 (3) Except for the provisions of RCW 43.84.160, the treasury income  
7 account may be utilized for the payment of purchased banking services  
8 on behalf of treasury funds including, but not limited to, depository,  
9 safekeeping, and disbursement functions for the state treasury and  
10 affected state agencies. The treasury income account is subject in all  
11 respects to chapter 43.88 RCW, but no appropriation is required for  
12 payments to financial institutions. Payments shall occur prior to  
13 distribution of earnings set forth in subsection (4) of this section.

14 (4) Monthly, the state treasurer shall distribute the earnings  
15 credited to the treasury income account. The state treasurer shall  
16 credit the general fund with all the earnings credited to the treasury  
17 income account except:

18 (a) The following accounts and funds shall receive their  
19 proportionate share of earnings based upon each account's and fund's  
20 average daily balance for the period: The capitol building  
21 construction account, the Cedar River channel construction and  
22 operation account, the Central Washington University capital projects  
23 account, the charitable, educational, penal and reformatory  
24 institutions account, the common school construction fund, the county  
25 criminal justice assistance account, the county sales and use tax  
26 equalization account, the data processing building construction  
27 account, the deferred compensation administrative account, the deferred  
28 compensation principal account, the department of retirement systems  
29 expense account, the developmental disabilities community trust  
30 account, the drinking water assistance account, the drinking water  
31 assistance administrative account, the drinking water assistance  
32 repayment account, the Eastern Washington University capital projects  
33 account, the education construction fund, the education legacy trust  
34 account, the election account, the emergency reserve fund, The  
35 Evergreen State College capital projects account, the federal forest  
36 revolving account, the freight mobility investment account, the health  
37 services account, the public health services account, the health system  
38 capacity account, the personal health services account, the state



1 higher education construction account, the higher education  
2 construction account, the highway infrastructure account, the high-  
3 occupancy toll lanes operations account, the industrial insurance  
4 premium refund account, the judges' retirement account, the judicial  
5 retirement administrative account, the judicial retirement principal  
6 account, the local leasehold excise tax account, the local real estate  
7 excise tax account, the local sales and use tax account, the medical  
8 aid account, the mobile home park relocation fund, the multimodal  
9 transportation account, the municipal criminal justice assistance  
10 account, the municipal sales and use tax equalization account, the  
11 natural resources deposit account, the oyster reserve land account, the  
12 perpetual surveillance and maintenance account, the public employees'  
13 retirement system plan 1 account, the public employees' retirement  
14 system combined plan 2 and plan 3 account, the public facilities  
15 construction loan revolving account beginning July 1, 2004, the public  
16 health supplemental account, the public works assistance account, the  
17 Puyallup tribal settlement account, the real estate appraiser  
18 commission account, the regional transportation investment district  
19 account, the resource management cost account, the rural Washington  
20 loan fund, the site closure account, the small city pavement and  
21 sidewalk account, the special wildlife account, the state employees'  
22 insurance account, the state employees' insurance reserve account, the  
23 state investment board expense account, the state investment board  
24 commingled trust fund accounts, the supplemental pension account, the  
25 Tacoma Narrows toll bridge account, the teachers' retirement system  
26 plan 1 account, the teachers' retirement system combined plan 2 and  
27 plan 3 account, the tobacco prevention and control account, the tobacco  
28 settlement account, the transportation infrastructure account, the  
29 transportation partnership account, the tuition recovery trust fund,  
30 the University of Washington bond retirement fund, the University of  
31 Washington building account, the volunteer fire fighters' and reserve  
32 officers' relief and pension principal fund, the volunteer fire  
33 fighters' and reserve officers' administrative fund, the Washington  
34 bioenergy assistance account, the Washington fruit express account, the  
35 Washington judicial retirement system account, the Washington law  
36 enforcement officers' and fire fighters' system plan 1 retirement  
37 account, the Washington law enforcement officers' and fire fighters'  
38 system plan 2 retirement account, the Washington public safety

1 employees' plan 2 retirement account, the Washington school employees'  
2 retirement system combined plan 2 and 3 account, the Washington state  
3 health insurance pool account, the Washington state patrol retirement  
4 account, the Washington State University building account, the  
5 Washington State University bond retirement fund, the water pollution  
6 control revolving fund, and the Western Washington University capital  
7 projects account. Earnings derived from investing balances of the  
8 agricultural permanent fund, the normal school permanent fund, the  
9 permanent common school fund, the scientific permanent fund, and the  
10 state university permanent fund shall be allocated to their respective  
11 beneficiary accounts. All earnings to be distributed under this  
12 subsection (4)(a) shall first be reduced by the allocation to the state  
13 treasurer's service fund pursuant to RCW 43.08.190.

14 (b) The following accounts and funds shall receive eighty percent  
15 of their proportionate share of earnings based upon each account's or  
16 fund's average daily balance for the period: The aeronautics account,  
17 the aircraft search and rescue account, the county arterial  
18 preservation account, the department of licensing services account, the  
19 essential rail assistance account, the ferry bond retirement fund, the  
20 grade crossing protective fund, the high capacity transportation  
21 account, the highway bond retirement fund, the highway safety account,  
22 the motor vehicle fund, the motorcycle safety education account, the  
23 pilotage account, the public transportation systems account, the Puget  
24 Sound capital construction account, the Puget Sound ferry operations  
25 account, the recreational vehicle account, the rural arterial trust  
26 account, the safety and education account, the special category C  
27 account, the state patrol highway account, the transportation 2003  
28 account (nickel account), the transportation equipment fund, the  
29 transportation fund, the transportation improvement account, the  
30 transportation improvement board bond retirement account, and the urban  
31 arterial trust account.

32 (5) In conformance with Article II, section 37 of the state  
33 Constitution, no treasury accounts or funds shall be allocated earnings  
34 without the specific affirmative directive of this section.

35 NEW SECTION. **Sec. 9.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 10.** Sections 1 through 6 and 9 of this act  
4 expire June 30, 2016. Any moneys in the Washington bioenergy  
5 assistance account on that date and any moneys received pursuant to  
6 assistance made under this chapter must be deposited in the general  
7 fund.

8 NEW SECTION. **Sec. 11.** Sections 1 through 6, 9, 10, and 12 of this  
9 act constitute a new chapter in Title 15 RCW.

10 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2006.

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