

SSB 6656 - S AMD 134

By Senator Rockefeller

ADOPTED 02/15/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington  
4 state has the opportunity to realize a prosperous, affordable, and  
5 clean energy future through energy efficiency.

6 (2) The pilot financing mechanism established in this chapter may  
7 enable local governments to expand and improve existing energy  
8 conservation and energy efficiency loan programs to aid the private and  
9 nonprofit sectors in undertaking residential, commercial, and  
10 industrial energy efficiency upgrades.

11 (3) The legislature finds that this financing tool may lead to  
12 reductions in household energy bills, provide incentives for the  
13 creation of new family-wage jobs in construction, manufacturing, and  
14 installation of energy-saving products, encourage investments by the  
15 utility sector in a cleaner environment, decrease the need for new  
16 power plant construction, and increase energy security.

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

19 (1) "Energy conservation equipment" means equipment for the  
20 conservation or more efficient use of energy, regardless of source,  
21 installed at or near the intended place of use. However, the equipment  
22 may not include any individual equipment or co-owned and controlled  
23 cluster of equipment with a generating capacity that exceeds the net  
24 metering system electrical generating capacity threshold established in  
25 RCW 80.60.010(10)(a). Energy conservation equipment includes, but is  
26 not limited to: Weatherizing equipment; energy-conserving lighting  
27 systems, heating and cooling systems, equipment to replace inefficient  
28 wood burning heating devices, and appliances; and equipment or systems  
29 that permit owners or substantial users of property or equipment to

1 generate all or a portion of their own electricity through the on-site  
2 installation of distributed electricity generation systems that use as  
3 fuel solar, wind, geothermal, or hydropower, or other renewable  
4 resources available on-site and not from a commercial source.

5 (2) "Energy conservation services" means the provision of services  
6 to assist owners or substantial users of structures or energy  
7 conservation equipment in the acquisition, installation, and operation  
8 of energy conservation equipment, fixtures, or improvements. Energy  
9 conservation services include, but are not limited to: Energy audit  
10 services; weatherization services; energy conservation equipment  
11 financing, acquisition, and installation services; services to replace  
12 inefficient wood burning heating devices; and other measures to reduce  
13 energy on-site consumption regardless of source. Energy conservation  
14 services may not be considered "a conversion from one energy source to  
15 another" that is limited to the change or substitution of one  
16 commercial energy supplier for another commercial energy supplier.

17 (3) "Municipality" means a city or town.

18 NEW SECTION. **Sec. 3.** The provision of energy conservation  
19 services under this chapter is declared to be a public use and a public  
20 and municipal purpose, which may be conducted through a public utility  
21 operated by a municipality. Energy conservation services may be  
22 provided through an existing utility system already operated by the  
23 municipality. A municipality that provides energy conservation  
24 services under this chapter is declared to be engaged in the sale or  
25 distribution of energy services under Article VIII, section 10 of the  
26 state Constitution.

27 NEW SECTION. **Sec. 4.** (1)(a) The authority provided under this  
28 chapter applies to municipalities wholly located within the electric  
29 service territories of Tacoma public utilities, Seattle city light, and  
30 Puget Sound energy as of the effective date of this section.

31 (b) The authorization in (a) of this subsection is limited to the  
32 municipality's boundaries and do not extend to any unincorporated areas  
33 in an electric utility's service area.

34 (2)(a) By ordinance, a municipality may create an energy  
35 conservation services utility for the purpose of providing to its  
36 inhabitants and property owners energy conservation services that lead

1 to the more efficient consumption of energy resources, from whatever  
2 source generated, and may construct, purchase, acquire, lease, add to,  
3 extend, maintain, and operate a system or program of energy  
4 conservation services.

5 (b) Prior to creating an energy conservation services utility, the  
6 legislative authority of the municipality must hold a public hearing  
7 and make a legislative determination, based on presentations at the  
8 hearing, that the energy conservation services proposed to be provided  
9 by the municipality will make available additional or complementary  
10 services, target underserved areas or populations, or otherwise add  
11 incremental value to the preexisting programs and services provided by  
12 an electric or natural gas energy distribution utility servicing the  
13 municipality.

14 (c) Energy conservation services are only authorized under this  
15 chapter if the cost per unit of energy saved or produced by the use of  
16 such materials and equipment is less than the cost per unit of energy  
17 produced by the next least costly new energy resource that could be  
18 acquired to meet future demand.

19 (3) For the purpose of providing energy conservation services, the  
20 municipality has the full power to operate and regulate such systems  
21 and programs; to enter into agreements for the maintenance and  
22 operation of any facilities, equipment, or systems, under such terms  
23 and conditions as may be determined by the legislative authority of the  
24 municipality to be in the municipality's interest; and other powers as  
25 may be necessary for the provision and financing of energy conservation  
26 services. Nothing in this chapter authorizes any municipality to  
27 generate, transmit, distribute, or sell electricity. Nothing in this  
28 chapter may be construed to restrain or limit the authority of any  
29 individual, partnership, corporation, private utility, or public  
30 utility from establishing and providing energy conservation services.

31 (4) The legislative authority of the municipality has full  
32 authority to set rates or charges for energy conservation services  
33 provided to customers of the energy conservation service utility if the  
34 rates charged are uniform for the same class of customer or service.  
35 In classifying customers served or services furnished, the legislative  
36 authority may consider: The difference in cost of services to the  
37 various customers; the location of the various customers within the  
38 municipality; the difference in cost of maintenance, operation, repair,

1 and replacement of the various parts of the system; the different  
2 character of the services furnished various customers; the quantity and  
3 quality of the services furnished; and any other matters that present  
4 a reasonable difference as a ground for distinction. The legislative  
5 authority of the municipality has the full authority to regulate and  
6 control the energy conservation services so delivered, together with  
7 the right to handle and sell or lease any energy conservation  
8 equipment, fixtures, or accessories of any kind, necessary and  
9 convenient for the provision of energy conservation services.

10 (5) A qualifying utility under RCW 19.280.030 that serves a  
11 municipality providing energy conservation services under this chapter  
12 may exclusively claim the energy savings achieved by the energy  
13 conservation services for purposes of complying with RCW 19.280.040.  
14 At the request of the qualifying utility, municipalities must provide  
15 the qualifying utility, the department of commerce, and the Washington  
16 utilities and transportation commission with any relevant data to  
17 effectuate this purpose.

18 (6) A municipality may issue general obligation or revenue bonds,  
19 notes, warrants, or other evidences of indebtedness for the purposes of  
20 providing all or part of the costs of providing energy conservation  
21 services, which shall be issued and sold in accordance with chapters  
22 39.44, 39.46, 39.50, and 39.53 RCW. No municipality may enter into a  
23 contract to sell loans financed by an energy services conservation  
24 utility to a third party for the purpose of securitizing those loans  
25 without approval by the legislative authority of the municipality. Any  
26 contract that requires a municipality to service loans that it  
27 originated must limit the liability of the municipality by prohibiting  
28 the commingling of its loans in a securities instrument with loans  
29 issued by other parties. No indebtedness may be issued after June 30,  
30 2015. However, indebtedness previously issued may continue to be  
31 serviced.

32 (7) Municipalities providing energy conservation services under  
33 this chapter must establish quality assurance programs that must  
34 include the following: (a) A requirement that contractors be  
35 prequalified; (b) the maintenance of a list of prequalified  
36 contractors; (c) the creation of minimum standards for prequalified  
37 contractors that include: (i) Legal compliance procedures; (ii) proper  
38 classification of employees; (iii) use of a qualified energy efficiency

1 workforce if such workers are available; and (iv) maintenance of  
2 records needed to verify compliance; and (d) a third-party, independent  
3 verification process.

4 (8) The authority granted in this chapter must be consistent with,  
5 and not limit, supplant, replace, or conflict with, any authority to  
6 provide energy conservation services through an existing municipal  
7 utility.

8 (9) Energy conservation service utilities formed under this chapter  
9 must file annual reports stating the number of customers served, the  
10 amount of assistance per customer, the estimated energy savings per  
11 customer, and the effectiveness of their quality assurance programs.  
12 Municipalities must submit their reports to the respective electric  
13 utilities serving their residents, which must consolidate the reports  
14 and submit them electronically to the appropriate legislative  
15 committees by December 1st each year until the expiration of the pilot  
16 program.

17 NEW SECTION. **Sec. 5.** (1) Any municipality engaged in the  
18 provision of energy conservation services under this chapter is  
19 authorized, within limits established by the Constitution of the state  
20 of Washington, to assist the owners of structures or equipment in  
21 financing the acquisition and installation of materials and equipment,  
22 for compensation or otherwise, for the conservation or more efficient  
23 use of energy in such structures or equipment pursuant to an energy  
24 conservation plan adopted by the municipality if the cost per unit of  
25 energy saved or produced by the use of such materials and equipment is  
26 less than the cost per unit of energy produced by the next least costly  
27 new energy resource that could be acquired to meet future demand. Any  
28 financing authorized under this chapter may only be used for energy  
29 conservation services in existing structures.

30 (2) Except where otherwise authorized, such assistance is limited  
31 to:

32 (a) Providing an inspection of the structure or equipment, either  
33 directly or through one or more inspectors under contract, to determine  
34 and inform the owner of the estimated cost of purchasing and installing  
35 conservation materials and equipment for which financial assistance  
36 will be approved and the estimated life cycle savings in energy costs

1 that are likely to result from the installation of the materials or  
2 equipment;

3 (b) Providing a list of businesses that sell and install the  
4 materials and equipment within or in close proximity to the service  
5 area of the municipality, each of which businesses must have requested  
6 to be included and must have the ability to provide the products in a  
7 workmanlike manner and to utilize the materials in accordance with the  
8 prevailing national standards;

9 (c) Arranging to have approved conservation materials and equipment  
10 installed by a private contractor whose bid is acceptable to the owner  
11 of the residential structure and verifying the installation; and

12 (d) Arranging or providing financing for the purchase and  
13 installation of approved conservation materials and equipment. The  
14 materials and equipment must be purchased from a private business and  
15 be installed by a private business or the owner.

16 (3)(a) Pay back must be in the form of incremental additions to an  
17 existing local government utility or tax bill, billed either together  
18 with use charge or separately. Loans may not exceed two hundred forty  
19 months in length. The municipality may make assistance available in  
20 the form of grants made under this chapter for energy conservation  
21 improvements to existing structures owned or occupied by persons  
22 qualifying as poor or infirm consistent with the state Constitution.

23 (b) If pay back is in the form of incremental additions to a  
24 property tax bill, and if a servicer maintains an escrow account for a  
25 borrower of the energy conservation services related to the property,  
26 then the municipality shall contact the servicer of the existing escrow  
27 within thirty days to communicate the incremental increase in monthly  
28 payments required to make the energy conservation services payment when  
29 due.

30 (4) The municipal legislative authority shall approve the aggregate  
31 amount of such loans and the repayment terms by ordinance and may, by  
32 ordinance, delegate to staff the approval of individual loans  
33 consistent with loan program guidelines approved in the ordinance. The  
34 municipality and the property owner shall enter into a loan agreement  
35 setting forth the terms of the loan, which agreement may provide for  
36 acceleration in the event a loan installment is delinquent. In order  
37 to secure loans, the municipality shall have a statutory lien on the  
38 property, not exceeding five percent of the assessed value of the

1 property as of the last assessment preceding the loan funding date, on  
2 which energy conservation improvements so financed are installed or  
3 constructed. The statutory lien shall be paramount and superior to any  
4 other lien or encumbrance thereafter created except a lien for general  
5 taxes, special assessment district assessments, and liens filed under  
6 RCW 35.92.360, 54.16.280, or 36.94.460. Any lien for any amount in  
7 excess of five percent of the assessed value of the property may be  
8 obtained and perfected in accordance with applicable law. The loan  
9 shall be a lien upon property from the time the loan agreement is  
10 executed. If the municipal legislative authority in granting loans has  
11 acted in good faith and without fraud, the loan shall be valid and  
12 enforceable as such and the lien thereof upon the property shall be  
13 valid.

14 (5) The municipality may foreclose a lien in an action in the  
15 superior court. All or any of the tracts subject to such a lien may be  
16 proceeded against in a single action, and all parties appearing of  
17 record as owning or claiming to own or having an interest in or lien  
18 upon the tracts involved shall be impleaded in the action as parties  
19 defendant. An action to foreclose a lien must be commenced within two  
20 years after the date that the loan first becomes subject to  
21 acceleration under the loan documents. Liens to secure loans may be  
22 foreclosed in the manner provided by RCW 35.67.250 through 35.67.270.

23 (6) The municipality may pledge revenues from loan payments to  
24 secure and repay general obligation or revenue bonds, notes, or other  
25 forms of indebtedness issued by or on behalf of the municipality, which  
26 indebtedness shall be issued in accordance with this chapter and  
27 chapters 39.44, 39.46, 39.50, and 39.53 RCW. For the purpose of  
28 securing the payment of the principal of and interest on any bonds or  
29 notes, the municipality may create a reserve fund. The principal  
30 amount of any loan may include a proportionate share of the costs of  
31 issuing the bonds, notes, or other indebtedness, and may include up to  
32 an additional amount to fund a reserve fund, consistent with RCW  
33 39.44.140. The bonds, warrants, or other evidences of indebtedness  
34 shall be deemed to be for capital purposes within the meaning of the  
35 uniform system of accounts for municipal corporations.

36 **Sec. 6.** RCW 35.92.070 and 1987 c 145 s 1 are each amended to read  
37 as follows:

1       When the governing body of a city or town deems it advisable that  
2 the city or town purchase, acquire, or construct any such public  
3 utility, or make any additions and betterments thereto or extensions  
4 thereof, it shall provide therefor by ordinance, which shall specify  
5 and adopt the system or plan proposed, and declare the estimated cost  
6 thereof, as near as may be, and the ordinance shall be submitted for  
7 ratification or rejection by majority vote of the voters of the city or  
8 town at a general or special election.

9       (1) No submission shall be necessary:

10       (a) When the work proposed is an addition to, or betterment of,  
11 extension of, or an increased water supply for existing waterworks, or  
12 an addition, betterment, or extension of an existing system or plant of  
13 any other public utility;

14       (b) When in the charter of a city a provision has been adopted  
15 authorizing the corporate authorities thereof to provide by ordinance  
16 for acquiring, opening, or operating any of such public utilities;  
17 (~~(e)~~)

18       (c) When in the judgment of the corporate authority, the public  
19 health is being endangered by the discharge of raw or untreated sewage  
20 into any body of water and the danger to the public health may be  
21 abated by the construction and maintenance of a sewage disposal plant;  
22 or

23       (d) When the governing body of a city or town deems it advisable to  
24 form an energy conservation services utility under chapter 35.-- RCW  
25 (the new chapter created in section 7 of this act).

26       (2) Notwithstanding subsection (1) of this section, submission to  
27 the voters shall be necessary if:

28       (a) The project or work may produce electricity for sale in excess  
29 of present or future needs of the water system;

30       (b) The city or town does not own or operate an electric utility  
31 system;

32       (c) The work involves an ownership greater than twenty-five percent  
33 in a new water supply project combined with an electric generation  
34 facility; and

35       (d) The combined facility has an installed capacity in excess of  
36 five megawatts.

37       (3) Notwithstanding subsection (1) of this section, submission to  
38 the voters shall be necessary to make extensions to a public utility



1 which would expand the previous service capacity by fifty percent or  
2 more, where such increased service capacity is financed by the issuance  
3 of general obligation bonds.

4 (4) Thirty days' notice of the election shall be given in the  
5 official newspaper of the city or town, by publication at least once  
6 each week in the paper during such time.

7 (5) When a proposition has been adopted, or in the cases where no  
8 submission is necessary, the corporate authorities of the city or town  
9 may proceed forthwith to purchase, construct, and acquire the public  
10 utility or make additions, betterments, and extensions thereto and to  
11 make payment therefor.

12 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute  
13 a new chapter in Title 35 RCW.

14 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act expire June  
15 30, 2015."

SSB 6656 - S AMD  
By Senator Rockefeller

**ADOPTED 02/15/2010**

16 On page 1, line 4 of the title, after "energy;" strike the  
17 remainder of the title and insert "amending RCW 35.92.070; adding a new  
18 chapter to Title 35 RCW; and providing an expiration date."

--- END ---