
**Technology, Energy & Communications
Committee**

HB 2853

Brief Description: Authorizing a local financing tool to fund energy efficiency upgrades and removing financial barriers to implementing energy conservation programs.

Sponsors: Representatives Rolfes, McCoy, Lias, Seaquist, Dunshee, Nelson, Upthegrove, Hudgins, Chase, Wallace, Kenney and Simpson.

Brief Summary of Bill

- Authorizes municipalities to provide energy conservation services through a newly created energy conservation services utility or an existing electric, water, wastewater, solid waste, heating, or other utility system.
- Specifies that a municipality may develop a plan to reduce its greenhouse gas emissions from governmental activities.
- Requires the Washington Utilities and Transportation Commission (WUTC) to approve, upon request, a rate adjustment mechanism to allow an electrical or natural gas company to recover: (1) all cost-effective conservation expenditures; and (2) non-fuel revenue requirements that would have been recovered by the company absent conservation savings.

Hearing Date: 1/21/10

Staff: Kara Durbin (786-7133).

Background:

General Powers of Municipal Utilities.

Municipal utilities are authorized for the purpose of furnishing residents with gas, electricity, and other means of power and facilities for lighting, including streetlights, heating, fuel, and power purposes. If a municipality intends to purchase, acquire or construct a public utility, or expand

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an existing utility, the city must specify by ordinance the system or plan proposed. The ordinance must be submitted to the voters of the municipality for ratification or rejection by majority vote.

Municipal Bond Authority.

Municipalities, including municipal utilities, are authorized to issue and sell several types of bonds according to uniform procedures outlined in state and federal law. One of the types of bonds issued by municipalities is called a general obligation bond. General obligation bonds are payable from tax revenues of the municipality and any other funds lawfully available and pledged by the municipality for that purpose.

Municipalities are also authorized to issue revenue bonds. Revenue bonds are not general obligation debt of the issuing entity. Instead, payment is secured by the specific revenue pledged to pay the interest and principal on the bonds.

Municipalities may also form local improvement districts (LIDs). LIDs are a mechanism for financing capital improvements through the formation of special assessment districts.

Constitutional and Statutory Provisions Authorizing Conservation.

The State Constitution generally prohibits the gift or loan of public money by state or local governments. An exception to this general prohibition can be found in Article VIII, Section 10 of the State Constitution, which authorizes counties, cities, municipal corporations, or political subdivisions of the state engaged in the sale or distribution of energy to assist owners of structures or equipment in financing conservation measures. Any financing for conservation must be used for conservation purposes in existing structures and must not be used for any purpose that results in the conversion from one energy source to another.

In addition to parameters outlined in Article VIII, Section 10 of the State Constitution, state law contains provisions that electric municipal utilities and public utility districts must follow when implementing conservation loan financing programs, including contracting-out provisions and payback terms and methods. Terms used in Article VII, Section 10 of the State Constitution are also defined. The term "conservation purposes in existing structures" includes projects that allow a public utility's customers to generate all or a portion of their own electricity through on-site installation of solar, wind, geothermal or mini-hydroelectric generating systems, or other distributed generation systems that use fuel from on-site renewable resources. Projects are not considered a "conversion from one energy source to another" so long as they do not involve the substitution of one commercial energy supplier for another commercial energy supplier.

Offsets of Greenhouse Gas Emissions.

In January of 2007, the Washington State Supreme Court (Court) held in *Okeson v City of Seattle* that, among other things, state law did not provide municipal utilities the express or implied statutory authority to offset their utility's greenhouse gas emissions. In reaching this conclusion, the Court reasoned that a municipal power utility is engaging in a non-proprietary, general governmental function when it purchases offset contracts as a means of offsetting the utility's own greenhouse gas emissions.

In April of 2007, the Legislature passed a law that expressly authorizes municipal utilities, counties, and public utility districts to engage in greenhouse gases mitigation activities as part of their utility function.

Washington Utilities and Transportation Commission.

The Washington Utilities and Transportation Commission (WUTC) regulates the rates charged by investor-owned electric utilities operating in the state. The WUTC is required to ensure that rates charged are "fair, just and reasonable." Utilities are required to charge the rates on file with the WUTC.

The WUTC may approve a 2 percent incentive rate of return for energy efficiency programs that provide a priority for senior citizens or low-income customers. In addition, the WUTC may adopt a policy allowing an incentive rate of return on investments in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

Summary of Bill:

Energy Conservation Services.

A municipality may provide energy conservation services in one of two ways: (1) through creating an independent energy conservation services utility; or (2) through an existing electric, water, wastewater, solid waste, heating, or other utility system already operated by the municipality.

Prior to offering energy conservation services, the legislative authority of the municipality must hold a public hearing and make a determination that the energy conservation services proposed will: (1) make available additional or complementary services; (2) target underserved populations; or (3) add incremental value to preexisting conservation programs offered by the electric or natural gas utility. Municipalities providing energy conservation services must coordinate with existing conservation programs and services offered by the electric or natural gas utility serving that municipality.

The legislative authority of the municipality has the authority to set rates or charges for energy conservation services provided to customers of the system, if the rates charged are uniform for the same class of customers or service.

A municipality may issue general obligation, revenue bonds, or notes in order to provide all or part of the cost of providing energy conservation services. A municipality may also form a local improvement district and may issue assessment bonds or notes for the purpose of financing all or part of the cost of providing energy conservation services.

Provisions in state law that require a public vote before creating or expanding an electric utility do not apply to the establishment of an energy conservation services utility.

Conservation Loans.

An energy conservation service utility may assist owners of structures or equipment in conservation if the cost per unit of energy saved or produced is less than the cost per unit of energy produced by the next least costly new energy resource that could be acquired. Any financing must be used for conservation in existing structures and may not be used for any purpose that results in the conversion from one energy source to another. The term "conservation purposes in existing structures" may include projects that allow customers to generate all or a portion of their electricity through on-site installation of a renewable energy system. Payback for conservation measures must be through the utility bill. Loans must not exceed 240 months in length.

Additional Conservation Loan Requirements.

An energy conservation service utility must approve the aggregate amount of conservation loans and the repayment terms by ordinance. In order to secure loans, the energy conservation service utility will be given a statutory lien on the property, not to exceed 5 percent of the current assessed value of the property. Such statutory liens constitute a lien "paramount and superior" to any other lien or encumbrance except a lien for general taxes and special assessment district assessments. A lien for any amount in excess of 5 percent of the assessed value may be obtained and perfected.

Revenues from loan payments may be pledged to secure and repay any general obligation or revenue bonds issued. To secure payment of the principal of and interest on any bonds or notes, a reserve fund may be created.

These provisions also apply to municipal utilities and public utility districts that provide conservation loans.

Energy Conservation Grants for the Poor.

A municipal utility, public utility district, or energy conservation service utility may provide grants for energy conservation improvements to existing structures owned or occupied by persons that qualify as poor or infirm.

Mitigation of Greenhouse Gas Emissions.

A municipality or county may develop a plan to reduce its greenhouse gas emissions, or achieve no-net emissions, from municipal or county governmental activities. Such activities may include the operation of any facilities, equipment, fleet of vehicles, or other systems that it owns, operates, leases, or uses. The municipality or county may enter into a mitigation agreement with the local provider or electric or natural gas utility services.

Rate Adjustment for Conservation Savings.

Upon request by an electrical or gas company, the Washington Utilities and Transportation Commission (WUTC) must approve a rate adjustment mechanism to: (1) provide recovery of all prudently incurred, cost-effective expenditures for conservation; and (2) ensure recovery of authorized nonfuel revenue requirements that a utility would have recovered absent conservation

savings. No more than three percent of the utility's annual revenues in any given year may be given in the form of a rate adjustment.

This rate adjustment does not apply to any rate for retail wheeling service, high voltage service, or large general service greater than three average megawatts, or to commercial or industrial gas service or gas transportation service greater than 500,000 therms per year.

Provisions relating to the WUTC and the adoption of policies to provide financial incentives for energy efficiency are removed from state law.

The term "conservation savings" includes: (1) savings from electrical or gas company programs and company-sponsored programs; (2) rebate-based programs and education-based programs; (3) conservation due to changes in federal, state or local building energy codes and equipment standards.

The term "conservation target" is defined but is not used in the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.