
SUBSTITUTE HOUSE BILL 1007

State of Washington

61st Legislature

2009 Regular Session

By House Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Morrell, Lias, Anderson, Upthegrove, Seaquist, Hudgins, and Moeller)

READ FIRST TIME 02/16/09.

1 AN ACT Relating to creating a sustainable energy trust; amending
2 RCW 43.180.020; adding new sections to chapter 43.180 RCW; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to promote the
6 development of renewable energy technologies and the application of
7 energy efficiency measures by establishing a sustainable energy trust
8 bond that can be used to finance renewable energy and energy efficiency
9 project costs. The legislature finds that by providing access to low-
10 cost capital to finance renewable energy and energy efficiency
11 projects, a key barrier is eliminated.

12 **Sec. 2.** RCW 43.180.020 and 1990 c 167 s 1 are each amended to read
13 as follows:

14 (~~Unless the context clearly requires otherwise,~~) The definitions
15 in this section apply throughout this chapter unless the context
16 clearly requires otherwise.

17 (1) "Bonds" means the bonds, notes, or other evidences of

1 indebtedness of the commission, the interest paid on which may or may
2 not qualify for tax exemption.

3 (2) "Center" means the Washington climate and rural energy
4 development center at Washington State University, established under
5 RCW 28B.30.642.

6 (3) "Certified application" means a certified improvement and
7 vendors approved by the center.

8 (4) "Code" means the federal internal revenue code of 1954, as now
9 or hereafter amended, and the regulations and rulings promulgated
10 thereunder.

11 ((+3)) (5) "Commission" means the Washington state housing finance
12 commission or any board, body, commission, department, or officer
13 succeeding to the principal functions thereof or to whom the powers
14 conferred upon the commission shall be given by law.

15 ((+4)) (6) "Costs of housing" means all costs related to the
16 development, design, acquisition, construction, reconstruction,
17 leasing, rehabilitation, and other improvements of housing, as
18 determined by the commission.

19 ((+5)) (7) "Eligible person" means a person or family eligible in
20 accordance with standards promulgated by the commission. Such persons
21 shall include those persons whose income is insufficient to obtain at
22 a reasonable cost, without financial assistance, decent, safe, and
23 sanitary housing in the area in which the person or family resides, and
24 may include such other persons whom the commission determines to be
25 eligible.

26 ((+6)) (8) "Energy efficiency improvement" means an installation
27 or modification that is designed to reduce energy consumption in
28 residential or commercial buildings. The term includes, but is not
29 limited to: Insulation; storm windows and doors; automatic energy
30 control systems; heating, ventilating, or air conditioning and
31 distribution system modifications or replacements in buildings or
32 central plants; caulking and weather stripping; energy recovery
33 systems; and day lighting systems.

34 (9) "Financing document" means a loan agreement or other agreement
35 for the purpose of providing funds to pay or secure debt service on
36 sustainable energy trust bonds.

37 (10) "Housing" means specific new, existing, or improved
38 residential dwellings within this state or dwellings to be constructed

1 within this state. The term includes land, buildings, and manufactured
2 dwellings, and improvements, furnishings, and equipment, and such other
3 nonhousing facilities, furnishings, equipment, and costs as may be
4 incidental or appurtenant thereto if in the judgment of the commission
5 the facilities, furnishings, equipment and costs are an integral part
6 of the project. Housing may consist of single-family or multifamily
7 dwellings in one or more structures located on contiguous or
8 noncontiguous parcels or any combination thereof. Improvements may
9 include such equipment and materials as are appropriate to accomplish
10 energy efficiency within a dwelling. The term also includes a dwelling
11 constructed by a person who occupies and owns the dwelling, and nursing
12 homes licensed under chapter 18.51 RCW.

13 ~~((7))~~ (11) "Improvement" means an energy efficiency improvement
14 or a renewable energy improvement.

15 (12) "Mortgage" means a mortgage, mortgage deed, deed of trust,
16 security agreement, or other instrument securing a mortgage loan and
17 constituting a lien on or security interest in housing. The property
18 may be held in fee simple or on a leasehold under a lease having a
19 remaining term, at the time the mortgage is acquired, of not less than
20 the term of repayment of the mortgage loan secured by the mortgage.
21 The property may also be housing which is evidenced by an interest in
22 a cooperative association or corporation if ownership of the interest
23 entitles the owner of the interest to occupancy of a dwelling owned by
24 the association or corporation.

25 ~~((8))~~ (13) "Mortgage lender" means any of the following entities
26 which customarily provide service or otherwise aid in the financing of
27 housing and which are approved as a mortgage lender by the commission:
28 A bank, trust company, savings bank, national banking association,
29 savings and loan association, building and loan association, mortgage
30 banker, mortgage company, credit union, life insurance company, or any
31 other financial institution, governmental agency, municipal
32 corporation, or any holding company for any of the entities specified
33 in this subsection.

34 ~~((9))~~ (14) "Mortgage loan" means an interest-bearing loan or a
35 participation therein, made to a borrower, for the purpose of financing
36 the costs of housing, evidenced by a promissory note, and which may or
37 may not be secured (a) under a mortgage agreement, (b) under any other
38 security agreement, regardless of whether the collateral is personal or

1 real property, or (c) by insurance or a loan guarantee of a third
2 party. However, an unsecured loan shall not be considered a mortgage
3 loan under this definition unless the amount of the loan is under two
4 thousand five hundred dollars.

5 (15) "Project costs" means costs of: (a) The construction of
6 improvements; (b) architectural, engineering, consulting, accounting,
7 and legal costs related directly to the development, financing, and
8 construction of improvements; (c) finance costs, including discounts,
9 if any, the costs of issuing sustainable energy trust bonds, and costs
10 incurred in carrying out any trust agreement; (d) the refunding of any
11 outstanding obligations incurred for any of the costs outlined in this
12 subsection; and (e) other costs incidental to any of the costs listed
13 in this subsection.

14 (16) "Renewable energy improvement" means a fixture, product,
15 system, device, or interacting group of devices installed behind the
16 meter of any residential or commercial building that produces energy
17 from renewable resources. The term includes, but is not limited to:
18 Photovoltaic systems; solar thermal systems; small wind systems;
19 biomass systems; and geothermal systems.

20 (17) "Sustainable energy trust bond" means a taxable or tax-exempt
21 nonrecourse revenue bond, nonrecourse revenue note, or other
22 nonrecourse revenue obligation issued for the purpose of providing
23 financing to a nonprofit corporation on an interim or permanent basis.

24 (18) "Sustainable energy trust fund" means a debt service fund.

25 (19) "User" means one or more persons acting as lessee, purchaser,
26 mortgagor, or borrower under a financing document and may include a
27 party who transfers the right of use and occupancy to another party by
28 lease, sublease, or otherwise.

29 NEW SECTION. Sec. 3. A new section is added to chapter 43.180 RCW
30 to read as follows:

31 The commission must allow property owners within the state to
32 receive an energy efficiency improvement or renewable energy
33 improvement for their property. The commission must contract with
34 property owners with a certified application under section 4 of this
35 act for the installation or placement of improvements for their
36 property. In order for the vendor to commence work on improvements,
37 the commission must issue a purchase order to the vendor who has

1 provided the binding fixed bid price for the improvement in the
2 certified application. Upon notification by the property owner that
3 the work to install or place the improvement is complete, the
4 commission shall pay the vendor the value of the binding fixed bid
5 price.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.180 RCW
7 to read as follows:

8 (1) To receive a certified application from the center, a property
9 owner must obtain a binding fixed bid price from a vendor for the
10 energy efficiency improvement or renewable energy improvement on a
11 property owner's property. The binding fixed bid price must be
12 provided to the center as part of the application process in this
13 section.

14 (2) A property owner shall submit to the center an application in
15 a form and manner prescribed by the center that includes, but is not
16 limited to, the following information:

17 (a) The name and address of the property owner and location of
18 where the energy efficiency improvement or renewable energy improvement
19 will be installed;

20 (b) The name and address of the vendor of the energy efficiency
21 improvement or renewable energy improvement; and

22 (c) A copy of the invoice from the vendor to the property owner
23 that details the energy efficiency improvement or renewable energy
24 improvement to be made and the binding fixed bid price of the energy
25 efficiency improvement or renewable energy improvement.

26 (3) The center shall collect an application fee from the property
27 owner in order to cover the cost to certify an application.

28 (4) Within thirty days of receipt of the application the center
29 shall (a) advise the property owner in writing whether the energy
30 efficiency improvement or renewable energy improvement qualifies as a
31 certified application and (b) provide the commission with a copy of the
32 certified application.

33 (5) The commission has the following powers with respect to
34 providing energy efficiency improvements and renewable energy
35 improvements for property owners including all powers incidental or
36 necessary for the performance of these activities:

1 (a) To make secured loans to property owners with certified
2 applications for the purpose of providing the financing of all or part
3 of the project cost of any energy efficiency improvement or renewable
4 energy improvement. The period of such loans is twenty-five years for
5 renewable energy improvements and ten years for energy efficiency
6 improvements. The commission may administer the loan payments upon
7 such terms and conditions as it considers advisable that are not in
8 conflict with this chapter;

9 (b) To issue sustainable energy trust bonds for the purpose of
10 financing improvement project costs and to secure the payment of the
11 sustainable energy trust bonds as provided in this chapter;

12 (c) To execute financing documents incidental to the powers
13 enumerated in this section;

14 (d) To accept grants and gifts for the purposes of this chapter;

15 (e) To provide a fixed cost payment to vendors for completed energy
16 efficiency improvements or renewable energy improvements related to the
17 certified applications;

18 (f) To establish special funds with any financial institution
19 providing fiduciary services within or without the state as it deems
20 necessary and appropriate and deposit money in the fund; and

21 (g) To recover costs associated with executing the responsibilities
22 under this act through the issuance of sustainable energy trust bonds.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.180 RCW
24 to read as follows:

25 The commission has the following powers with respect to providing
26 energy efficiency improvements and renewable energy improvements for
27 property owners including all powers incidental or necessary for the
28 performance of these activities:

29 (1) To make secured loans to certified applicants for the purpose
30 of providing the financing of all or part of the project cost of any
31 energy efficiency improvement or renewable energy improvement. The
32 period of such loans shall be twenty-five years renewable energy
33 improvements and ten years for energy efficiency improvements. The
34 commission may administer the loan payments upon such terms and
35 conditions as it considers advisable that are not in conflict with this
36 chapter;

1 (2) To issue sustainable energy trust bonds for the purpose of
2 financing fixed project costs of energy efficiency improvements and
3 renewable energy improvements and to secure the payment of the
4 sustainable energy trust bonds as provided in this chapter;

5 (3) To execute financing documents incidental to the powers
6 enumerated in this section;

7 (4) To accept grants and gifts for the purposes of this chapter;

8 (5) To provide fixed payments to vendors for projects with
9 certified applications;

10 (6) To establish special funds with any financial institution
11 providing fiduciary services within or without the state as it deems
12 necessary and appropriate and deposit money in the fund; and

13 (7) To recover costs associated with executing the responsibilities
14 of the commission under this act through the issuance of bonds.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.180 RCW
16 to read as follows:

17 (1) The proceeds of the sustainable energy trust bonds of each
18 issue must be used solely for the purposes set forth in this chapter
19 and must be disbursed in such a manner and under such restrictions, if
20 any, provided in the resolution authorizing the issuance of the
21 sustainable energy trust bonds or in the trust agreement securing the
22 bonds. If the proceeds of the sustainable energy trust bonds of any
23 series issued with respect to any improvements exceed the cost of the
24 improvements for which the bonds are issued, the surplus must be
25 deposited to the credit of the sustainable energy trust fund for the
26 sustainable energy trust bonds or used to purchase the sustainable
27 energy trust bonds in the open market.

28 (2) The commission may issue interim notes in the manner provided
29 for the issuance of sustainable energy trust bonds to fund improvements
30 prior to issuing other sustainable energy trust bonds to fund such
31 improvements. The commission may issue sustainable energy trust bonds
32 to fund improvements that are exchangeable for other sustainable energy
33 trust bonds, when these other sustainable energy trust bonds are
34 executed and available for delivery.

35 (3) The principal and interest on any sustainable energy trust
36 bonds issued by the commission must be secured by a pledge of
37 unexpended bond proceeds and the revenues and receipts derived from

1 property owner payments for improvements pursuant to financing
2 documents. The resolution under which the sustainable energy trust
3 bonds are authorized to be issued and any financing document may
4 contain agreements and provisions respecting the maintenance or use of
5 the property owner's covered thereby, loan payments, the creation and
6 maintenance of special funds from such revenues or from sustainable
7 energy trust bond proceeds, the rights and remedies available in the
8 event of default, and other provisions relating to the security for the
9 bonds, as the commission considers advisable.

10 (4) All sustainable energy trust bonds issued under this chapter
11 and any interest coupons applicable thereto are negotiable instruments
12 within the meaning of Article 8 of the Uniform Commercial Code, Title
13 62A RCW, regardless of form or character.

14 (5) Notwithstanding subsection (1) of this section, such bonds and
15 interim notes may be issued and sold in accordance with chapter 39.46
16 RCW.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.180 RCW
18 to read as follows:

19 Any sustainable energy trust bonds issued under this chapter may be
20 secured by a trust agreement between the commission and a corporate
21 trustee, which may be any trust company or bank having the powers of a
22 trust company within or without the state. The trust agreement may
23 evidence a pledge or assignment of the financing documents and loan
24 revenues to be received from a borrower with respect to property owners
25 for the payment of principal and interest and any premium on the bonds
26 as the same shall become due and payable and may provide for creation
27 and maintenance of reserves for these purposes. A trust agreement or
28 resolution providing for the issuance of the sustainable energy trust
29 bonds may contain such provisions for protecting and enforcing the
30 rights and remedies of the bond owners as may be reasonable and proper
31 and not in violation of law, including covenants setting forth the
32 duties in relation to the acquisition of property and the construction,
33 improvement, maintenance, use, repair, operation, and insurance of the
34 property owner for which the bonds are authorized, and the custody,
35 safeguarding, and application of all money. Any bank or trust company
36 incorporated under the laws of the state which may act as depository of
37 the proceeds of sustainable energy trust bonds or of revenues may

1 furnish such indemnifying bonds or pledge such securities as may be
2 required by the commission. A trust agreement may set forth the rights
3 and remedies of the bond owners and of the trustee and may restrict the
4 individual right of action by bond owners as is customary in trust
5 agreements or trust indentures securing bonds and debentures of private
6 corporations. In addition, a trust agreement may contain such
7 provisions as the commission considers reasonable and proper for the
8 security of the bond owners which are not in conflict with this
9 chapter.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.180 RCW
11 to read as follows:

12 The proceedings authorizing any sustainable energy trust bonds
13 under this chapter or any financing document securing the sustainable
14 energy trust bonds may provide that if there is a default in the
15 payment of the principal and interest of the bonds or in the
16 performance of any agreement contained in the proceedings or financing
17 document, the payment and performance may be enforced by mandamus or by
18 the appointment of a receiver in equity with power to charge and
19 collect loan repayments, and to apply the revenues from the property
20 owner in accordance with the proceedings or provisions of the financing
21 document. Any financing document entered into under this chapter may
22 also provide that if there is a default in the payment thereof or a
23 violation of any agreement contained in the financing document, the
24 property owner may be foreclosed and sold under proceedings in equity
25 or in any other manner now or hereafter permitted by law. Any
26 financing document may also provide that any trustee under the
27 financing document or the holder of any sustainable energy trust bonds
28 secured thereby may become the purchaser at any foreclosure sale if it
29 is the highest bidder.

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