

Chapter 39.35C RCW
ENERGY CONSERVATION PROJECTS

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RCW 39.35C.010 Definitions. (Effective until June 30, 2033.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(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) (a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

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

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3) (a) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation 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.

(b) The expected value of energy equipment and services at the time of contract execution that are provided through a performance-based contract may exceed the fair market value.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy as a service" means a performance-based contract in which a state agency, public school district, public university, or municipality makes service payments to a third party or entity for energy services, which may include the provision of energy equipment that is owned and operated by a third party or entity.

(7) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

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

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

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

(11) "Performance-based contracting" means contracts for which payment or payment obligations are conditional on achieving contractually specified energy savings, which may include regular service payments made by a state agency, public school district, public university, or municipality to any persons or entities that own energy equipment and services under a performance-based contract.

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

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

(14) "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.

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

(16) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state. [2023 c 309 s 3; 2022 c 128 s 1. Prior: 2011 1st sp.s. c 43 s 248; 2007 c 39 s 4; 2001 c 214 s 20; 1996 c 186 s 405; 1991 c 201 s 2.]

Expiration date—2023 c 309 ss 2-5: See note following RCW 39.35A.020.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.010 Definitions. (Effective June 30, 2033.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(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) (a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

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

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation 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) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

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

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

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

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

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

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

(13) "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.

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

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state. [2022 c 128 s 1. Prior: 2011 1st sp.s. c 43 s 248; 2007 c 39 s 4; 2001 c 214 s 20; 1996 c 186 s 405; 1991 c 201 s 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.020 State agency and school district conservation projects—Implementation—Department assistance. (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. Each state agency shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in chapter 43.19 RCW, except that any state agency that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this subsection for those facilities included in the audits and conservation measures. Each school district shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in RCW 39.35C.025. Performance-based contracting shall be the preferred method for completing energy audits and implementing cost-effective conservation measures.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The department, in consultation with affected public agencies, shall develop and issue guidelines for cost-effectiveness determination. The purpose of the guidelines is to define a procedure and method for performance of cost-effectiveness. The department's assistance to state agencies and school districts 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 department 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 department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department 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 department shall enter into a written agreement with the public agency for the recovery of costs. [2022 c 128 s 3; 2001 c 214 s 21; 1996 c 186 s 406; 1991 c 201 s 3.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.025 Energy audit of school district facilities—Completion dates—Identification, implementation of cost-effective energy conservation measures. (1) Except as provided in subsections (2) and (3) of this section, each school district shall conduct an energy audit of its facilities. This energy audit may be conducted by contract or by other arrangement, including appropriate district staff. Performance-based contracting shall be the preferred method for implementing and completing energy audits.

(a) For each district facility, the energy consumption surveys shall be completed no later than December 31, 2001, and the walk-through surveys shall be completed no later than October 1, 2002. Upon completion of each walk-through survey, the district shall implement energy conservation maintenance and operation procedures that may be identified for any district facility. These procedures shall be implemented as soon as possible, but not later than twelve months after the walk-through survey.

(b) Except as provided in subsection (3) of this section, if a walk-through survey has identified potentially cost-effective energy conservation measures, the district shall undertake an investment grade audit of the facility. Investment grade audits shall be completed no later than June 30, 2003, and installation of cost-effective conservation measures recommended in the investment grade audit shall be completed no later than December 31, 2004.

(2) A school district that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this section for those facilities included in the audits and conservation measures.

(3) A school district that after reasonable efforts and consultation with the department is unable to obtain a contract with

an energy service company to conduct an investment grade audit or install cost-effective conservation measures recommended in an investment grade audit, is exempt from the requirements of subsection (1)(b) of this section. [2001 c 214 s 22.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

RCW 39.35C.030 Department coordination of conservation development with utilities. (1) The department 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 department shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the department 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 department 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 department 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 RCW 39.35C.040(2) (d) and (e). [1996 c 186 s 407; 1991 c 201 s 4.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.040 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 department 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 department 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 state agency or school district and the department.

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

(c) Before making a decision under (d) of this subsection, the department 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 department determines to be prudent.

(d) The department 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 department 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 department 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. [1996 c 186 s 408; 1991 c 201 s 5.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.050 Authority of state agencies and school districts to implement conservation—Energy as a service contracts. (Effective until June 30, 2033.) In addition to any other authorities conferred by law:

(1) The department, 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 or school district acting through the department or acting independently, may:

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

(b) Contract for energy services, including through a performance-based contract; and

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

(2) (a) This subsection authorizes state agencies, public school districts, public universities, and municipalities to enter into energy as a service contracts. Pursuant to this subsection, a state agency, public school district, public university, or municipality may, whether acting independently or through the department:

(i) Develop conservation projects and services that require the ownership of energy equipment to be held by other persons or entities;

(ii) Contract for energy services, including through a performance-based contract;

(iii) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration; and

(iv) Contract with a person or entity for energy equipment or services.

(b) Any contract for energy as a service entered into pursuant to the authority of this subsection is subject to the following conditions:

(i) The contract may include terms that transfer ownership of energy equipment from the state agency, public school district, public university, or municipality to the person or entity;

(ii) The person or entity is responsible for cost-savings and performance guarantees through the terms of the contract;

(iii) The value of energy equipment or services at the time of contract execution may exceed the fair market value;

(iv) At the end of the term of the contract, equipment ownership may be transferred back to the state agency, public school district, public university, or municipality;

(v) The state agency, public school district, public university, or municipality will ensure that a contract does not directly result in loss of any position of employment by state employees in the

classified service under RCW 41.06.020, employees included in the Washington management service under RCW 41.06.022, or school district employees under RCW 28A.150.203;

(vi) Training must be offered in the preventative maintenance and other related activities of energy equipment and services as detailed in the contract for energy services to existing classified employees who currently provide maintenance of energy equipment for the state agency, public school district, public university, or municipality; and

(vii) Prior to entering into a contract, the state agency, public school district, public university, or municipality must coordinate with the department to analyze the cost-effectiveness of the proposed performance-based contract compared to alternative available financing and service mechanisms, including certificates of participation. The state agency, public school district, public university, or municipality may enter into a contract only if the cost-effectiveness is greater than other available alternatives.

(3) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(4) A school district may also:

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

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

(5) Direct financial grants and incentives received on behalf of the state agency, public school district, public university, or municipality will be passed on to the state agency, public school district, public university, or municipality.

(6) In exercising the authority granted by subsections (1), (3), and (4) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [2023 c 309 s 4; 2015 c 79 s 10; 1996 c 186 s 409; 1991 c 201 s 6.]

Expiration date—2023 c 309 ss 2-5: See note following RCW 39.35A.020.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.050 Authority of state agencies and school districts to implement conservation. (Effective June 30, 2033.) In addition to any other authorities conferred by law:

(1) The department, 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 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;

(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 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 RCW 39.35C.040. [2015 c 79 s 10; 1996 c 186 s 409; 1991 c 201 s 6.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.060 Authority to finance conservation in state agencies, public school districts, public universities, and municipalities. (Effective until June 30, 2033.) State agencies, public school districts, public universities, and municipalities may use financing contracts under chapter 39.94 RCW, as well as performance-based contracts, to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts or performance-based contracts shall be sufficient to pay, when due, the principal and interest on the contracts or the services payments over the agreed upon term. Performance-based contracts entered into by state agencies, public school districts, public universities, and municipalities under chapter 309, Laws of 2023 that include the purchase of real or personal property are subject to the requirements of chapter 39.94 RCW. Pursuant to chapter 39.94 RCW, no later than December 31, 2023, the department shall complete development of approved model contracts authorized by chapter 309, Laws of 2023. [2023 c 309 s 5; 1996 c 186 s 410; 1991 c 201 s 7.]

Expiration date—2023 c 309 ss 2-5: See note following RCW 39.35A.020.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.060 Authority to finance conservation in school districts and state agencies. (Effective June 30, 2033.) State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The

department 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. [1996 c 186 s 410; 1991 c 201 s 7.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.070 Development of cogeneration projects. (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 department 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 department 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 department shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the department and the appropriate state agency, the department shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The department 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 department 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 department, 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 department and the appropriate state agency. The department, 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 department 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 department 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 department 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 department 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 department 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 department 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 department 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 department and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the department 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 department shall seek and obtain legislative appropriation and approval for development. Nothing in chapter 201, Laws of 1991 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 department 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. [1996 c 186 s 411; 1991 c 201 s 8.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.080 Sale of cogenerated electricity and thermal energy. It is the intention of chapter 201, Laws of 1991 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 chapter 201, Laws of 1991 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 department 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 [department] 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 department and the affected state agency.

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

(c) Before approving an energy purchase agreement, the department 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 department deems prudent. The department 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 chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat beyond the explicit provisions of chapter 201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 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 department 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.

(5) For the purposes of this section, "waste heat" means the thermal energy that otherwise would be released to the environment from an industrial process, electric generation, or other process. [1996 c 186 s 412; 1996 c 33 s 4; 1991 c 201 s 9.]

Reviser's note: This section was amended by 1996 c 33 s 4 and by 1996 c 186 s 412, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—1996 c 33: See note following RCW 80.04.550.

RCW 39.35C.090 Additional authority of state agencies. In addition to any other authorities conferred by law:

(1) The department, 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 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 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 39.26.160, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the department 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 RCW 39.35C.080. [2015 c 79 s 11; 1996 c 186 s 413; 1991 c 201 s 10.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.130 Adoption of rules. The department may adopt rules to implement RCW 39.35C.020 through 39.35C.040, 39.35C.070, 39.35C.080, and 39.35.050. [1996 c 186 s 416; 1991 c 201 s 17.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

RCW 39.35C.140 Conservation—Distributed energy resources. For purposes of this chapter:

- (1) Conservation may be achieved through the deployment of distributed energy resources; and
- (2) Distributed energy resources include, but are not limited to, energy efficiency projects that are not cogeneration projects, energy storage, demand response, electric vehicle charging infrastructure, and grid-interactive efficient buildings. [2022 c 128 s 4.]

RCW 39.35C.150 Private-public partnerships—Performance-based contracts—Report. (Expires June 30, 2033.) (1) The objective of chapter 309, Laws of 2023 is to promote private-public partnerships to reduce the amount of deferred maintenance required by the clean building performance standard and decarbonize buildings and central energy systems in public facilities in a cost-effective manner.

(2) By June 30, 2031, the department must submit a report to the governor and the appropriate committees of the legislature on the adoption rate and cost-effectiveness of the performance-based contract authorized under chapter 309, Laws of 2023. The report must include:

- (a) The number of performance-based contracts issued;
- (b) The cost-effectiveness of performance-based contracts issued, compared to alternative available financing mechanisms, including certificates of participation;
- (c) Recommendations to improve the use of performance-based contracts; and
- (d) Any other significant information associated with the implementation of chapter 309, Laws of 2023.

(3) It is the intent of the legislature to consider the findings of the report and extend the expiration date of chapter 309, Laws of 2023 if performance-based contracts are achieving the legislative objective.

- (4) This section expires June 30, 2033. [2023 c 309 s 1.]