
ENGROSSED SUBSTITUTE SENATE BILL 5735

State of Washington

64th Legislature

2015 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen, Rivers, Angel, Baumgartner, Brown, Hewitt, Bailey, Schoesler, Parlette, Honeyford, Braun, Padden, Becker, Hatfield, and Sheldon)

READ FIRST TIME 02/18/15.

1 AN ACT Relating to providing incentives for carbon reduction
2 investments; amending RCW 19.285.030 and 19.285.040; and creating a
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that climate change
6 is real and that human activity may contribute to climate change. The
7 legislature further finds that climate change is impacting the state.
8 The 2008 legislature established statewide emission goals that are to
9 be achieved by 2020, 2035, and 2050, but did not enact a
10 comprehensive set of measures to ensure that the emission reductions
11 would be accomplished. The 2015 legislature further finds that action
12 should be taken to encourage and incentivize clean energy
13 investments.

14 **Sec. 2.** RCW 19.285.030 and 2014 c 45 s 1 are each amended to
15 read as follows:

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

18 (1) "Attorney general" means the Washington state office of the
19 attorney general.

1 (2) "Auditor" means: (a) The Washington state auditor's office or
2 its designee for qualifying utilities under its jurisdiction that are
3 not investor-owned utilities; or (b) an independent auditor selected
4 by a qualifying utility that is not under the jurisdiction of the
5 state auditor and is not an investor-owned utility.

6 (3)(a) "Biomass energy" includes: (i) Organic by-products of
7 pulping and the wood manufacturing process; (ii) animal manure; (iii)
8 solid organic fuels from wood; (iv) forest or field residues; (v)
9 untreated wooden demolition or construction debris; (vi) food waste
10 and food processing residuals; (vii) liquors derived from algae;
11 (viii) dedicated energy crops; and (ix) yard waste.

12 (b) "Biomass energy" does not include: (i) Wood pieces that have
13 been treated with chemical preservatives such as creosote,
14 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old
15 growth forests; or (iii) municipal solid waste.

16 (4) "Coal transition power" has the same meaning as defined in
17 RCW 80.80.010.

18 (5) "Commission" means the Washington state utilities and
19 transportation commission.

20 (6) "Conservation" means any reduction in electric power
21 consumption resulting from increases in the efficiency of energy use,
22 production, or distribution.

23 (7) "Cost-effective" has the same meaning as defined in RCW
24 80.52.030.

25 (8) "Council" means the Washington state apprenticeship and
26 training council within the department of labor and industries.

27 (9) "Customer" means a person or entity that purchases
28 electricity for ultimate consumption and not for resale.

29 (10) "Department" means the department of commerce or its
30 successor.

31 (11) "Distributed generation" means an eligible renewable
32 resource where the generation facility or any integrated cluster of
33 such facilities has a generating capacity of not more than five
34 megawatts.

35 (12) "Eligible renewable resource" means:

36 (a) Electricity from a generation facility powered by a renewable
37 resource other than freshwater that commences operation after March
38 31, 1999, where: (i) The facility is located in the Pacific
39 Northwest; or (ii) the electricity from the facility is delivered

1 into Washington state on a real-time basis without shaping, storage,
2 or integration services;

3 (b) Incremental electricity produced as a result of efficiency
4 improvements completed after March 31, 1999, to hydroelectric
5 generation projects owned by a qualifying utility and located in the
6 Pacific Northwest where the additional generation does not result in
7 new water diversions or impoundments;

8 (c) Hydroelectric generation from a project completed after March
9 31, 1999, where the generation facility is located in irrigation
10 pipes, irrigation canals, water pipes whose primary purpose is for
11 conveyance of water for municipal use, and wastewater pipes located
12 in Washington where the generation does not result in new water
13 diversions or impoundments;

14 (d) Carbon reduction investments;

15 (e) Qualified biomass energy; or

16 ((e)) (f) For a qualifying utility that serves customers in
17 other states, electricity from a generation facility powered by a
18 renewable resource other than freshwater that commences operation
19 after March 31, 1999, where: (i) The facility is located within a
20 state in which the qualifying utility serves retail electrical
21 customers; and (ii) the qualifying utility owns the facility in whole
22 or in part or has a long-term contract with the facility of at least
23 twelve months or more.

24 (13) "Investor-owned utility" has the same meaning as defined in
25 RCW 19.29A.010.

26 (14) "Load" means the amount of kilowatt-hours of electricity
27 delivered in the most recently completed year by a qualifying utility
28 to its Washington retail customers.

29 (15)(a) "Nonpower attributes" means all environmentally related
30 characteristics, exclusive of energy, capacity reliability, and other
31 electrical power service attributes, that are associated with the
32 generation of electricity from a renewable resource, including but
33 not limited to the facility's fuel type, geographic location,
34 vintage, qualification as an eligible renewable resource, and avoided
35 emissions of pollutants to the air, soil, or water, and avoided
36 emissions of carbon dioxide and other greenhouse gases.

37 (b) "Nonpower attributes" does not include any aspects, claims,
38 characteristics, and benefits associated with the on-site capture and
39 destruction of methane or other greenhouse gases at a facility
40 through a digester system, landfill gas collection system, or other

1 mechanism, which may be separately marketable as greenhouse gas
2 emission reduction credits, offsets, or similar tradable commodities.
3 However, these separate avoided emissions may not result in or
4 otherwise have the effect of attributing greenhouse gas emissions to
5 the electricity.

6 (16) "Pacific Northwest" has the same meaning as defined for the
7 Bonneville power administration in section 3 of the Pacific Northwest
8 electric power planning and conservation act (94 Stat. 2698; 16
9 U.S.C. Sec. 839a).

10 (17) "Public facility" has the same meaning as defined in RCW
11 39.35C.010.

12 (18) "Qualified biomass energy" means electricity produced from a
13 biomass energy facility that: (a) Commenced operation before March
14 31, 1999; (b) contributes to the qualifying utility's load; and (c)
15 is owned either by: (i) A qualifying utility; or (ii) an industrial
16 facility that is directly interconnected with electricity facilities
17 that are owned by a qualifying utility and capable of carrying
18 electricity at transmission voltage.

19 (19) "Qualifying utility" means an electric utility, as the term
20 "electric utility" is defined in RCW 19.29A.010, that serves more
21 than twenty-five thousand customers in the state of Washington. The
22 number of customers served may be based on data reported by a utility
23 in form 861, "annual electric utility report," filed with the energy
24 information administration, United States department of energy.

25 (20) "Renewable energy credit" means a tradable certificate of
26 proof of at least one megawatt-hour of an eligible renewable resource
27 where the generation facility is not powered by freshwater. The
28 certificate includes all of the nonpower attributes associated with
29 that one megawatt-hour of electricity, and the certificate is
30 verified by a renewable energy credit tracking system selected by the
31 department.

32 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar
33 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
34 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
35 fuel as defined in RCW 82.29A.135 that is not derived from crops
36 raised on land cleared from old growth or first-growth forests where
37 the clearing occurred after December 7, 2006; or (i) biomass energy.

38 (22) "Rule" means rules adopted by an agency or other entity of
39 Washington state government to carry out the intent and purposes of
40 this chapter.

1 (23) "Year" means the twelve-month period commencing January 1st
2 and ending December 31st.

3 (24) "Carbon reduction investment" means an investment in support
4 of eligible projects or actions that reduce, prevent, or remove from
5 the atmosphere the emissions of greenhouse gases in the state. An
6 eligible project or action includes, but is not limited to,
7 investment in or purchase of the emissions reductions attributable to
8 the following: (a) Conservation measures exceeding the avoided cost
9 of power as identified by the Pacific Northwest electric power and
10 conservation planning council; (b) installation of electric vehicle
11 chargers and related infrastructure; (c) installation of
12 infrastructure to provide compressed natural gas, liquefied natural
13 gas, and renewable natural gas for motor vehicles, locomotives, and
14 marine vessels; (d) the fuel conversion of state ferries to liquefied
15 natural gas; (e) demand side management of electricity consumption;
16 (f) energy storage technologies; and (g) carbon sequestration
17 programs.

18 (25) "Greenhouse gas" means carbon dioxide (CO₂), methane (CH₄),
19 nitrogen trifluoride (NF₃), nitrous oxide (N₂O), sulfur hexafluoride
20 (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other
21 fluorinated greenhouse gases.

22 **Sec. 3.** RCW 19.285.040 and 2014 c 26 s 1 are each amended to
23 read as follows:

24 (1) Each qualifying utility shall pursue all available
25 conservation that is cost-effective, reliable, and feasible.

26 (a) By January 1, 2010, using methodologies consistent with those
27 used by the Pacific Northwest electric power and conservation
28 planning council in the most recently published regional power plan
29 as it existed on June 12, 2014, or a subsequent date as may be
30 provided by the department or the commission by rule, each qualifying
31 utility shall identify its achievable cost-effective conservation
32 potential through 2019. Nothing in the rule adopted under this
33 subsection precludes a qualifying utility from using its utility
34 specific conservation measures, values, and assumptions in
35 identifying its achievable cost-effective conservation potential. At
36 least every two years thereafter, the qualifying utility shall review
37 and update this assessment for the subsequent ten-year period.

1 (b) Beginning January 2010, each qualifying utility shall
2 establish and make publicly available a biennial acquisition target
3 for cost-effective conservation consistent with its identification of
4 achievable opportunities in (a) of this subsection, and meet that
5 target during the subsequent two-year period. At a minimum, each
6 biennial target must be no lower than the qualifying utility's pro
7 rata share for that two-year period of its cost-effective
8 conservation potential for the subsequent ten-year period.

9 (c)(i) Except as provided in (c)(ii) and (iii) of this
10 subsection, beginning on January 1, 2014, cost-effective conservation
11 achieved by a qualifying utility in excess of its biennial
12 acquisition target may be used to help meet the immediately
13 subsequent two biennial acquisition targets, such that no more than
14 twenty percent of any biennial target may be met with excess
15 conservation savings.

16 (ii) Beginning January 1, 2014, a qualifying utility may use
17 single large facility conservation savings in excess of its biennial
18 target to meet up to an additional five percent of the immediately
19 subsequent two biennial acquisition targets, such that no more than
20 twenty-five percent of any biennial target may be met with excess
21 conservation savings allowed under all of the provisions of this
22 section combined. For the purposes of this subsection (1)(c)(ii),
23 "single large facility conservation savings" means cost-effective
24 conservation savings achieved in a single biennial period at the
25 premises of a single customer of a qualifying utility whose annual
26 electricity consumption prior to the conservation savings exceeded
27 five average megawatts.

28 (iii) Beginning January 1, 2012, and until December 31, 2017, a
29 qualifying utility with an industrial facility located in a county
30 with a population between ninety-five thousand and one hundred
31 fifteen thousand that is directly interconnected with electricity
32 facilities that are capable of carrying electricity at transmission
33 voltage((7)) may use cost-effective conservation from that industrial
34 facility in excess of its biennial acquisition target to help meet
35 the immediately subsequent two biennial acquisition targets, such
36 that no more than twenty-five percent of any biennial target may be
37 met with excess conservation savings allowed under all of the
38 provisions of this section combined.

39 (d) In meeting its conservation targets, a qualifying utility may
40 count high-efficiency cogeneration owned and used by a retail

1 electric customer to meet its own needs. High-efficiency cogeneration
2 is the sequential production of electricity and useful thermal energy
3 from a common fuel source, where, under normal operating conditions,
4 the facility has a useful thermal energy output of no less than
5 thirty-three percent of the total energy output. The reduction in
6 load due to high-efficiency cogeneration shall be: (i) Calculated as
7 the ratio of the fuel chargeable to power heat rate of the
8 cogeneration facility compared to the heat rate on a new and clean
9 basis of a best-commercially available technology combined-cycle
10 natural gas-fired combustion turbine; and (ii) counted towards
11 meeting the biennial conservation target in the same manner as other
12 conservation savings.

13 (e) The commission may determine if a conservation program
14 implemented by an investor-owned utility is cost-effective based on
15 the commission's policies and practice.

16 (f) The commission may rely on its standard practice for review
17 and approval of investor-owned utility conservation targets.

18 (2)(a) Except as provided in (~~((j))~~) (m) of this subsection, each
19 qualifying utility shall use eligible renewable resources or acquire
20 equivalent renewable energy credits, or any combination of them, to
21 meet the following annual targets:

22 (i) At least three percent of its load by January 1, 2012, and
23 each year thereafter through December 31, 2015;

24 (ii) At least nine percent of its load by January 1, 2016, and
25 each year thereafter through December 31, 2019; and

26 (iii) At least fifteen percent of its load by January 1, 2020,
27 and each year thereafter.

28 (b) A qualifying utility may count distributed generation at
29 double the facility's electrical output if the utility: (i) Owns or
30 has contracted for the distributed generation and the associated
31 renewable energy credits; or (ii) has contracted to purchase the
32 associated renewable energy credits.

33 (c) In meeting the annual targets in (a) of this subsection, a
34 qualifying utility shall calculate its annual load based on the
35 average of the utility's load for the previous two years.

36 (d) A qualifying utility shall be considered in compliance with
37 an annual target in (a) of this subsection if: (i) The utility's
38 weather-adjusted load for the previous three years on average did not
39 increase over that time period; (ii) after December 7, 2006, the
40 utility did not commence or renew ownership or incremental purchases

1 of electricity from resources other than coal transition power or
2 renewable resources other than on a daily spot price basis and the
3 electricity is not offset by equivalent renewable energy credits; and
4 (iii) the utility invested at least one percent of its total annual
5 retail revenue requirement that year on eligible renewable resources,
6 renewable energy credits, or a combination of both.

7 (e) Beginning January 1, 2016, a qualifying utility may use
8 carbon reduction investments for compliance with an annual target in
9 (a) of this subsection as specified under this subsection (2)(e). For
10 the purposes of complying with an annual target in (a) of this
11 subsection, one-half metric ton of carbon dioxide equivalent
12 emissions reduced, prevented, or removed from the atmosphere is equal
13 to the compliance equivalent of one renewable energy credit. Each
14 compliance equivalent under this subsection (2)(e) must be recognized
15 by the commission or auditor for each year that the emissions
16 reduction is certified to persist. The determination and
17 certification of emissions reductions must be measured, verified, and
18 documented by a third-party expert retained by the qualifying utility
19 and subject only to determination or audit as specified under RCW
20 19.285.060. Emissions reductions under this subsection that are
21 certified to persist for longer than one year may be carried forward
22 and applied as compliance equivalents in future years.

23 (f) Beginning January 1, 2016, a qualifying utility is considered
24 in compliance with an annual target in (a) of this subsection if it
25 invests at least one percent of its total annual retail revenue
26 requirement for that year in carbon reduction investments as
27 identified in (e) of this subsection. Each compliance equivalent
28 under this subsection (2)(f) must be recognized by the commission or
29 auditor for each year that the emissions reduction is certified to
30 persist. The determination and certification of emissions reductions
31 must be measured, verified, and documented by a third-party expert
32 retained by the qualifying utility and subject only to determination
33 or audit as specified under RCW 19.285.060. Emissions reductions
34 under this subsection that are certified to persist for longer than
35 one year may be carried forward and applied as compliance equivalents
36 under (e) of this subsection.

37 (g) A qualifying utility using the alternative compliance path in
38 (f) of this subsection shall resume meeting the annual targets in (a)
39 of this subsection on a time frame comparable in length to what it
40 would have been before using this compliance path.

1 (h) The requirements of this section may be met for any given
2 year with renewable energy credits produced during that year, the
3 preceding year, or the subsequent year. Each renewable energy credit
4 may be used only once to meet the requirements of this section.

5 ~~((f))~~ (i) In complying with the targets established in (a) of
6 this subsection, a qualifying utility may not count:

7 (i) Eligible renewable resources or distributed generation where
8 the associated renewable energy credits are owned by a separate
9 entity; or

10 (ii) Eligible renewable resources or renewable energy credits
11 obtained for and used in an optional pricing program such as the
12 program established in RCW 19.29A.090.

13 ~~((g))~~ (j) Where fossil and combustible renewable resources are
14 cofired in one generating unit located in the Pacific Northwest where
15 the cofiring commenced after March 31, 1999, the unit shall be
16 considered to produce eligible renewable resources in direct
17 proportion to the percentage of the total heat value represented by
18 the heat value of the renewable resources.

19 ~~((h))~~ (k)(i) A qualifying utility that acquires an eligible
20 renewable resource or renewable energy credit may count that
21 acquisition at one and two-tenths times its base value:

22 (A) Where the eligible renewable resource comes from a facility
23 that commenced operation after December 31, 2005; and

24 (B) Where the developer of the facility used apprenticeship
25 programs approved by the council during facility construction.

26 (ii) The council shall establish minimum levels of labor hours to
27 be met through apprenticeship programs to qualify for this extra
28 credit.

29 ~~((i))~~ (l) A qualifying utility shall be considered in
30 compliance with an annual target in (a) of this subsection if events
31 beyond the reasonable control of the utility that could not have been
32 reasonably anticipated or ameliorated prevented it from meeting the
33 renewable energy target. Such events include weather-related damage,
34 mechanical failure, strikes, lockouts, and actions of a governmental
35 authority that adversely affect the generation, transmission, or
36 distribution of an eligible renewable resource under contract to a
37 qualifying utility.

38 ~~((j))~~ (m)(i) Beginning January 1, 2016, only a qualifying
39 utility that owns or is directly interconnected to a qualified

1 biomass energy facility may use qualified biomass energy to meet its
2 compliance obligation under this subsection.

3 (ii) A qualifying utility may no longer use electricity and
4 associated renewable energy credits from a qualified biomass energy
5 facility if the associated industrial pulping or wood manufacturing
6 facility ceases operation other than for purposes of maintenance or
7 upgrade.

8 ~~((k))~~ (n) An industrial facility that hosts a qualified biomass
9 energy facility may only transfer or sell renewable energy credits
10 associated with its facility to the qualifying utility with which it
11 is directly interconnected with facilities owned by such a qualifying
12 utility and that are capable of carrying electricity at transmission
13 voltage. The qualifying utility may only use an amount of renewable
14 energy credits associated with qualified biomass energy that are
15 equivalent to the proportionate amount of its annual targets under
16 (a)(ii) and (iii) of this subsection that was created by the load of
17 the industrial facility. A qualifying utility that owns a qualified
18 biomass energy facility may not transfer or sell renewable energy
19 credits associated with qualified biomass energy to another person,
20 entity, or qualifying utility.

21 (3) Utilities that become qualifying utilities after December 31,
22 2006, shall meet the requirements in this section on a time frame
23 comparable in length to that provided for qualifying utilities as of
24 December 7, 2006.

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