

**SSB 5840 - S AMD 162**

By Senators Marr, Brown

ADOPTED AS AMENDED 03/10/2009

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

3 "Sec. 1. RCW 19.285.020 and 2007 c 1 s 2 are each amended to read  
4 as follows:

5 Increasing energy conservation and the use of appropriately sited  
6 renewable energy facilities builds on the strong foundation of low-cost  
7 renewable hydroelectric generation in Washington state and will promote  
8 energy independence in the state and the Pacific Northwest region. It  
9 shall be the policy of the state to recognize and promote the use of  
10 low-cost renewable hydroelectric generation to firm, shape, and  
11 integrate other renewable energy resources into the northwestern  
12 electric grid for delivery to Washington residents. Making the most of  
13 our plentiful local resources will stabilize electricity prices for  
14 Washington residents, provide economic benefits for Washington counties  
15 and farmers, create high-quality jobs in Washington, provide  
16 opportunities for training apprentice workers in the renewable energy  
17 field, protect clean air and water, and position Washington state as a  
18 national leader in clean energy technologies.

19 **Sec. 2.** RCW 19.285.030 and 2007 c 1 s 3 are each amended to read  
20 as follows:

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

23 (1) "Attorney general" means the Washington state office of the  
24 attorney general.

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

1 (3) "Commission" means the Washington state utilities and  
2 transportation commission.

3 (4) "Conservation" means any reduction in electric power  
4 consumption resulting from increases in the efficiency of energy use,  
5 production, or distribution.

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

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

10 (7) "Customer" means a person or entity that purchases electricity  
11 for ultimate consumption and not for resale.

12 (8) "Department" means the department of community, trade, and  
13 economic development or its successor.

14 (9) "Distributed generation" means an eligible renewable resource  
15 where the generation facility or any integrated cluster of such  
16 facilities has a generating capacity of not more than five megawatts.

17 (10) "Eligible renewable resource" means:

18 (a) Electricity from a generation facility powered by a renewable  
19 resource other than fresh water, except as provided in (b) and (c) of  
20 this subsection, that commences operation after March 31, 1999,  
21 where(~~(i)~~) the facility is located (~~(in the Pacific Northwest; or~~  
22 ~~(ii) the electricity from the facility is delivered into Washington~~  
23 ~~state on a real-time basis without shaping, storage, or integration~~  
24 ~~services)) within the geographic boundary of the western electricity  
25 coordinating council or its successor entity; ((or))~~

26 (b) Incremental electricity produced as a result of efficiency  
27 improvements completed after March 31, 1999, to hydroelectric  
28 generation (~~(projects owned by a qualifying utility and))~~ facilities  
29 located in the Pacific Northwest or to hydroelectric generation in  
30 water supply pipes, irrigation pipes (~~(and))~~, or canals located in the  
31 Pacific Northwest, where the additional generation in either case does  
32 not result in new water diversions or impoundments; or

33 (c) Twenty-five percent of electricity from a biomass energy  
34 powered generation facility located in Washington, and that commenced  
35 operation before March 31, 1999.

36 (11) "Investor-owned utility" has the same meaning as defined in  
37 RCW 19.29A.010.

1 (12) "Load" means the amount of kilowatt-hours of electricity  
2 delivered in the most recently completed year by a qualifying utility  
3 to its Washington retail customers.

4 (13) "Nonpower attributes" means all environmentally related  
5 characteristics, exclusive of energy, capacity reliability, and other  
6 electrical power service attributes, that are associated with the  
7 generation of electricity from a renewable resource, including but not  
8 limited to the facility's fuel type, geographic location, vintage,  
9 qualification as an eligible renewable resource, and avoided emissions  
10 of pollutants to the air, soil, or water, and avoided emissions of  
11 carbon dioxide and other greenhouse gases. For an anaerobic digester,  
12 its nonpower attributes may be separated into avoided emissions of  
13 carbon dioxide, and other greenhouse gases, and into renewable energy  
14 credits.

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

19 (15) "Public facility" has the same meaning as defined in RCW  
20 39.35C.010.

21 (16) "Qualifying utility" means an electric utility, as the term  
22 "electric utility" is defined in RCW 19.29A.010, that serves more than  
23 twenty-five thousand customers in the state of Washington. The number  
24 of customers served may be based on data reported by a utility in form  
25 861, "annual electric utility report," filed with the energy  
26 information administration, United States department of energy.

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

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

1 clearing occurred after December 7, 2006; ~~((and))~~ (i) byproducts of  
2 pulping or wood manufacturing processes that are not derived from old  
3 growth forests, including but not limited to bark, wood chips, sawdust,  
4 and lignin in spent pulping liquors; (j) wooden demolition or  
5 construction debris; black liquors derived from algae and other  
6 sources; and (l) biomass energy based on animal waste, food waste, yard  
7 waste, biosolids, or solid organic fuels from wood, forest, or field  
8 residues, or dedicated energy crops that do not include (i) wood pieces  
9 that have been treated with chemical preservatives such as creosote,  
10 pentachlorophenol, or copper-chrome-arsenic; (ii) ~~((black-liquor~~  
11 byproduct from paper production; ~~((iii))~~) wood from old growth forests;  
12 or ~~((+iv))~~ (iii) municipal solid waste.

13 (19) "Rule" means rules adopted by an agency or other entity of  
14 Washington state government to carry out the intent and purposes of  
15 this chapter.

16 (20) "Year" means the twelve-month period commencing January 1st  
17 and ending December 31st.

18 **Sec. 3.** RCW 19.285.040 and 2007 c 1 s 4 are each amended to read  
19 as follows:

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

22 (a) By January 1, 2010, using methodologies consistent with those  
23 used by the Pacific Northwest electric power and conservation planning  
24 council in its most recently published regional power plan, each  
25 qualifying utility shall identify its achievable cost-effective  
26 conservation potential through 2019. At least every two years  
27 thereafter, the qualifying utility shall review and update this  
28 assessment for the subsequent ten-year period.

29 (b) ~~((Beginning))~~ By January 1, 2010, each qualifying utility shall  
30 establish and make publicly available a biennial acquisition target for  
31 cost-effective conservation consistent with its identification of  
32 achievable opportunities in (a) of this subsection, and meet that  
33 target during the subsequent two-year period. At a minimum, each  
34 biennial acquisition target must be no lower than the qualifying  
35 utility's pro rata share for that two-year period of its cost-effective  
36 conservation potential for the subsequent ten-year period. A  
37 qualifying utility may not use incremental electricity produced as a

1 result of efficiency improvements to hydroelectric generation  
2 facilities to meet its biennial conservation acquisition target if the  
3 improvements were used to meet its targets under subsection (2)(a) of  
4 this section.

5 (c) In meeting its conservation targets, a qualifying utility may  
6 count high-efficiency cogeneration owned and used by a retail electric  
7 customer to meet its own needs. High-efficiency cogeneration is the  
8 sequential production of electricity and useful thermal energy from a  
9 common fuel source, where, under normal operating conditions, the  
10 facility (~~((has a useful thermal energy output of no less than thirty-~~  
11 ~~three percent of the total energy output))~~) is designed to have a  
12 projected overall thermal conversion efficiency of at least seventy  
13 percent. For the purposes of this section, "overall thermal conversion  
14 efficiency" means the output of electricity plus usable heat divided by  
15 fuel input. The reduction in load due to high-efficiency cogeneration  
16 shall be ~~((:— (i) Calculated as the ratio of the fuel chargeable to~~  
17 ~~power heat rate of the cogeneration facility compared to the heat rate~~  
18 ~~on a new and clean basis of a best commercially available technology~~  
19 ~~combined cycle natural gas fired combustion turbine; and (ii))~~) counted  
20 towards meeting the biennial conservation target in the same manner as  
21 other production conservation savings.

22 (d) The commission may determine if a conservation program  
23 implemented by an investor-owned utility is cost-effective based on the  
24 commission's policies and practice.

25 (e) The commission may rely on its standard practice for review and  
26 approval of investor-owned utility conservation targets.

27 (2)(a) Each qualifying utility shall use eligible renewable  
28 resources ~~((or))~~, acquire equivalent renewable energy credits, or use  
29 up to twenty-five percent of conservation achieved in excess of a  
30 biennial acquisition target under subsection (1) of this section, or a  
31 combination of ((both)) these options, to meet the following annual  
32 targets:

33 (i) At least three percent of its load by January 1, 2012, and each  
34 year thereafter through December 31, ~~((2015))~~ 2013;

35 (ii) At least four percent of its load by January 1, 2014, and each  
36 year thereafter through December 31, 2015;

37 (iii) At least ((nine)) ten percent of its load by January 1, 2016,  
38 and each year thereafter through December 31, 2019; ((and

1       ~~(iii))~~ (iv) At least ~~(fifteen)~~ sixteen percent of its load by  
2 January 1, 2020, and each year thereafter through December 31, 2024;  
3 and

4       (v) At least twenty percent of its load by January 1, 2025, and  
5 each year thereafter.

6       (b) A qualifying utility may count distributed generation at double  
7 the facility's electrical output if the utility: (i) Owns or has  
8 contracted for the distributed generation and the associated renewable  
9 energy credits; or (ii) has contracted to purchase the associated  
10 renewable energy credits.

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

14       (d) A qualifying utility is considered in compliance with an annual  
15 target in (a) of this subsection if: (i) In any given target year its  
16 load growth, measured as load served in the target year compared to the  
17 utility's annual average load served in 2010 and 2011, is less than the  
18 target in (a) of this subsection for that year; and (ii) the utility  
19 meets one hundred percent of any increase in load for that target year  
20 with eligible renewable resources or renewable energy credits.

21       (e) A qualifying utility shall be considered in compliance with an  
22 annual target in (a) of this subsection if: (i) The utility's weather-  
23 adjusted load for the previous three years on average did not increase  
24 over that time period; (ii) after December 7, 2006, the utility did not  
25 commence or renew ownership or incremental purchases of electricity  
26 from resources other than renewable resources other than on a daily  
27 spot price basis and the electricity is not offset by equivalent  
28 renewable energy credits; and (iii) the utility invested at least one  
29 percent of its total annual retail revenue requirement that year on  
30 eligible renewable resources, renewable energy credits, or a  
31 combination of both.

32       ~~((e))~~ (f) The requirements of this section may be met for any  
33 given target year with renewable energy credits produced during that  
34 year, the preceding year, or the subsequent year. Qualifying utilities  
35 may purchase or contract for purchase renewable energy credits in  
36 advance of or throughout the target year, the preceding year, or the  
37 subsequent year for meeting the requirements of this section. Each

1 renewable energy credit may be used only once to meet the requirements  
2 of this section.

3 ~~((f))~~ (g) In complying with the targets established in (a) of  
4 this subsection, a qualifying utility may not count:

5 (i) Eligible renewable resources or distributed generation where  
6 the associated renewable energy credits are owned by a separate entity;  
7 ~~((e))~~

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

11 (iii) Efficiency improvements to hydroelectric generation  
12 facilities whose energy output is marketed by the Bonneville power  
13 administration that is attributable to any other utility other than the  
14 qualifying utility.

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

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

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

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

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

31 ~~((i))~~ (j) A qualifying utility that acquires solar energy may  
32 count that acquisition at four times its base value where the energy is  
33 produced using solar inverters and modules manufactured in Washington  
34 state.

35 (k) A qualifying utility shall be considered in compliance with an  
36 annual target in (a) of this subsection if events beyond the reasonable  
37 control of the utility that could not have been reasonably anticipated  
38 or ameliorated prevented it from meeting the renewable energy target.

1 Such events include weather-related damage, mechanical failure,  
2 strikes, lockouts, and actions of a governmental authority that  
3 adversely affect the generation, transmission, or distribution of an  
4 eligible renewable resource under contract to a qualifying utility.

5 (3) Utilities that become qualifying utilities after December 31,  
6 2006, shall meet the requirements in this section on a time frame  
7 comparable in length to that provided for qualifying utilities as of  
8 December 7, 2006.

9 **Sec. 4.** RCW 19.285.070 and 2007 c 1 s 7 are each amended to read  
10 as follows:

11 (1) On or before June 1, 2012, and annually thereafter, each  
12 qualifying utility shall report to the department on its progress in  
13 the preceding year in meeting the targets established in RCW  
14 19.285.040, including expected electricity savings from the biennial  
15 conservation target, expenditures on conservation, actual electricity  
16 savings results, the utility's annual load for the prior two years, the  
17 amount of megawatt-hours needed to meet the annual renewable energy  
18 target, the amount of megawatt-hours of each type of eligible renewable  
19 resource acquired, the type and amount of renewable energy credits  
20 acquired, and the percent of its total annual retail revenue  
21 requirement invested in the incremental cost of eligible renewable  
22 resources and the cost of renewable energy credits. ~~((For each year  
23 that a qualifying utility elects to demonstrate alternative compliance  
24 under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in  
25 its annual report relevant data to demonstrate that it met the criteria  
26 in that section.))~~ A qualifying utility may submit its report to the  
27 department in conjunction with its annual obligations in chapter 19.29A  
28 RCW.

29 (2) A qualifying utility that is an investor-owned utility shall  
30 also report all information required in subsection (1) of this section  
31 to the commission, and on or before June 1, 2014, and annually  
32 thereafter, report to the commission its compliance in meeting the  
33 targets established in RCW 19.285.040. All other qualifying utilities  
34 shall also make all information required in subsection (1) of this  
35 section available to the auditor, and on or before June 1, 2014, and  
36 annually thereafter, make available to the auditor its determination of  
37 compliance in meeting the targets established in RCW 19.285.040. For

1 each year that a qualifying utility elects to demonstrate alternative  
2 compliance under RCW 19.285.040(2) or 19.285.050(1), it must include in  
3 its annual report relevant data to demonstrate that it met the criteria  
4 in that section.

5 (3) A qualifying utility shall also make reports required in this  
6 section available to its customers.

7 **Sec. 5.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read  
8 as follows:

9 (1) The commission may adopt rules to ensure the proper  
10 implementation and enforcement of this chapter as it applies to  
11 investor-owned utilities.

12 (2) The department shall adopt rules concerning only process,  
13 timelines, and documentation to ensure the proper implementation of  
14 this chapter as it applies to qualifying utilities that are not  
15 investor-owned utilities. Those rules include, but are not limited to,  
16 rules associated with a qualifying utility's development of  
17 conservation targets under RCW 19.285.040(1); a qualifying utility's  
18 decision to pursue alternative compliance in RCW 19.285.040(2) (~~((d))~~)  
19 (e) or (~~((i))~~) (k) or 19.285.050(1); and the format and content of  
20 reports required in RCW 19.285.070. Nothing in this subsection may be  
21 construed to restrict the rate-making authority of the commission or a  
22 qualifying utility as otherwise provided by law.

23 (3) The commission and department may coordinate in developing  
24 rules related to process, timelines, and documentation that are  
25 necessary for implementation of this chapter.

26 (4)(a) Pursuant to the administrative procedure act, chapter 34.05  
27 RCW, rules needed for the implementation of this chapter must be  
28 adopted by (~~(December 31, 2007)~~) June 30, 2010. These rules may be  
29 revised as needed to carry out the intent and purposes of this chapter.

30 (b) Within six months of the adoption by the Pacific Northwest  
31 electric power and conservation planning council of each of its  
32 regional power plans, the department shall initiate rule making to  
33 consider adopting any changes in methodologies used by the Pacific  
34 Northwest electric power and conservation planning council that would  
35 impact a qualifying utility's conservation potential assessment in  
36 accordance with RCW 19.285.040(1).

1 (c) Within six months of the adoption by the Pacific Northwest  
2 electric power and conservation planning council of each of its  
3 regional power plans, the commission shall initiate rule making to  
4 consider adopting any changes in methodologies used by the Pacific  
5 Northwest electric power and conservation planning council that would  
6 impact a qualifying utility's conservation potential assessment in  
7 accordance with RCW 19.285.040(1).

8 (d) Rules adopted under (b) and (c) of this subsection must be  
9 applied to the next biennial target that begins at least six months  
10 after the adoption date of the rules.

11 (e) The department shall report to the legislature by December 1,  
12 2009, with recommendations on implementing the state's policy of  
13 recognizing and promoting the use of low-cost hydroelectric generation  
14 to firm, shape, and integrate other renewable energy resources into the  
15 northwestern electric grid for delivery to Washington residents. The  
16 report must include recommendations for promoting hydroelectric  
17 generation based upon the economic and environmental benefits of using  
18 hydroelectric generation in place of fossil fuel-fired generation for  
19 integration services. The report must include results from existing  
20 studies and analyses from the Pacific Northwest electric power and  
21 conservation planning council, the Bonneville power administration, and  
22 other relevant organizations. The department shall also consider  
23 information and recommendations from integration service providers and  
24 users.

25 NEW SECTION. Sec. 6. The joint legislative audit and review  
26 committee shall evaluate the feed-in tariff program contemplated in  
27 Substitute House Bill No. 1086 (2009). The evaluation shall include  
28 comparisons of the feed-in tariff program with the energy independence  
29 act, chapter 19.285 RCW, the net-metering program in chapter 80.60 RCW,  
30 and the renewable energy cost recovery program in chapter 82.16 RCW.  
31 In making the comparisons, the following factors must be examined: (1)  
32 the effectiveness of each program in encouraging the deployment of  
33 renewable energy systems; and (2) the effect of each program on  
34 ratepayers. The evaluation is due December 1, 2010."

**ADOPTED AS AMENDED 03/10/2009**

1        On page 1, line 1 of the title, after "Relating to" strike the  
2 remainder of the title and insert "the energy independence act;  
3 amending RCW 19.285.020, 19.285.030, 19.285.040, 19.285.070, and  
4 19.285.080; and creating a new section."

EFFECT:        Removes small hydropower under 30MW and certain  
impoundments as eligible renewable resources.

      Adds biosolids as an eligible renewable resource.

      Limits the renewable eligibility of electricity generated from a  
biomass facility commencing operation before March 31, 1999, to 25  
percent of its output.

      Allows 25 percent of conservation above the biennial conservation  
target to meet a renewable energy target.

      Maintains the current 2012 renewable energy target of 3 percent.

      Adds a new 2014 target of 4 percent and a 2025 target of 20  
percent.

      Lowers the 2025 target for acquiring eligible renewable resources  
from 21 percent to 20 percent.

      Adds a JLARC study of "feed-in tariffs." (Feed-in tariffs are  
fixed-price contracts that are generally designed to encourage the  
construction of new renewable resources.)

--- END ---