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**SUBSTITUTE SENATE BILL 5840**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Holmquist, Hatfield, Parlette, Ranker, Morton, Sheldon, Jarrett, Delvin, and Hewitt)

READ FIRST TIME 02/23/09.

1       AN ACT Relating to modifying the energy independence act; and  
2 amending RCW 19.285.020, 19.285.030, 19.285.040, 19.285.070, and  
3 19.285.080.

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

5       **Sec. 1.** RCW 19.285.020 and 2007 c 1 s 2 are each amended to read  
6 as follows:

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

1 field, protect clean air and water, and position Washington state as a  
2 national leader in clean energy technologies.

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

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

7 (1) "Attorney general" means the Washington state office of the  
8 attorney general.

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

14 (3) "Commission" means the Washington state utilities and  
15 transportation commission.

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

19 (5) "Cost-effective" has the same meaning as defined in RCW  
20 80.52.030.

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

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

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

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

30 (10) "Eligible renewable resource" means:

31 (a) Electricity from a generation facility powered by a renewable  
32 resource other than fresh water, except as provided in (b) through (d)  
33 of this subsection, that commences operation after March 31, 1999,  
34 where(~~(i)~~) the facility is located (~~(in the Pacific Northwest; or~~  
35 ~~(ii) the electricity from the facility is delivered into Washington~~  
36 ~~state on a real time basis without shaping, storage, or integration~~

1 services)) within the geographic boundary of the western electricity  
2 coordinating council or its successor entity; ((or))

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))~~ facilities  
6 located in the Pacific Northwest or to hydroelectric generation in  
7 water supply pipes, irrigation pipes ((and)), or canals located in the  
8 Pacific Northwest, where the additional generation in either case does  
9 not result in new water diversions or impoundments;

10 (c) Electricity from existing hydroelectric generation facilities  
11 located in Washington with a rated capacity of thirty megawatts or less  
12 and owned by a qualifying utility or joint operating agency formed  
13 under RCW 43.52.360;

14 (d) Electricity produced from an impoundment located in Washington  
15 that has not generated electricity with water since 1990 and that is  
16 modified or repowered after the effective date of this section to  
17 produce electricity; or

18 (e) Electricity from a biomass energy powered generation facility  
19 located in Washington, and that commenced operation before March 31,  
20 1999.

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

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

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

37 (14) "Pacific Northwest" has the same meaning as defined for the

1 Bonneville power administration in section 3 of the Pacific Northwest  
2 electric power planning and conservation act (94 Stat. 2698; 16 U.S.C.  
3 Sec. 839a).

4 (15) "Public facility" has the same meaning as defined in RCW  
5 39.35C.010.

6 (16) "Qualifying utility" means an electric utility, as the term  
7 "electric utility" is defined in RCW 19.29A.010, that serves more than  
8 twenty-five thousand customers in the state of Washington. The number  
9 of customers served may be based on data reported by a utility in form  
10 861, "annual electric utility report," filed with the energy  
11 information administration, United States department of energy.

12 (17) "Renewable energy credit" means a tradable certificate of  
13 proof of at least one megawatt-hour of an eligible renewable resource  
14 where the generation facility is not powered by fresh water, the  
15 certificate includes all of the nonpower attributes associated with  
16 that one megawatt-hour of electricity, and the certificate is verified  
17 by a renewable energy credit tracking system selected by the  
18 department.

19 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
20 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
21 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
22 fuel as defined in RCW 82.29A.135 that is not derived from crops raised  
23 on land cleared from old growth (~~(or first growth)~~) forests where the  
24 clearing occurred after December 7, 2006; (~~(and)~~) (i) byproducts of  
25 pulping or wood manufacturing processes that are not derived from old  
26 growth forests, including but not limited to bark, wood chips, sawdust,  
27 and lignin in spent pulping liquors; (j) wooden demolition or  
28 construction debris; black liquors derived from algae and other  
29 sources; and (l) biomass energy based on animal waste, food waste, yard  
30 waste, or solid organic fuels from wood, forest, or field residues, or  
31 dedicated energy crops that do not include (i) wood pieces that have  
32 been treated with chemical preservatives such as creosote,  
33 pentachlorophenol, or copper-chrome-arsenic; (ii) (~~(black liquor~~  
34 ~~byproduct from paper production; (iii))~~) wood from old growth forests;  
35 or (~~(+iv))~~) (iii) municipal solid waste.

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

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

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

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

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

14 (b) (~~Beginning~~) By January 1, 2010, each qualifying utility shall  
15 establish and make publicly available a biennial acquisition target for  
16 cost-effective conservation consistent with its identification of  
17 achievable opportunities in (a) of this subsection, and meet that  
18 target during the subsequent two-year period. At a minimum, each  
19 biennial acquisition target must be no lower than the qualifying  
20 utility's pro rata share for that two-year period of its cost-effective  
21 conservation potential for the subsequent ten-year period. A  
22 qualifying utility may not use incremental electricity produced as a  
23 result of efficiency improvements to hydroelectric generation  
24 facilities to meet its biennial conservation acquisition target if the  
25 improvements were used to meet its targets under subsection (2)(a) of  
26 this section.

27 (c) In meeting its conservation targets, a qualifying utility may  
28 count high-efficiency cogeneration owned and used by a retail electric  
29 customer to meet its own needs. High-efficiency cogeneration is the  
30 sequential production of electricity and useful thermal energy from a  
31 common fuel source, where, under normal operating conditions, the  
32 facility (~~has a useful thermal energy output of no less than thirty-~~  
33 ~~three percent of the total energy output)) is designed to have a~~  
34 projected overall thermal conversion efficiency of at least seventy  
35 percent. For the purposes of this section, "overall thermal conversion  
36 efficiency" means the output of electricity plus usable heat divided by  
37 fuel input. The reduction in load due to high-efficiency cogeneration

1 shall be ~~((:—(i) Calculated as the ratio of the fuel chargeable to~~  
2 ~~power heat rate of the cogeneration facility compared to the heat rate~~  
3 ~~on a new and clean basis of a best commercially available technology~~  
4 ~~combined-cycle natural gas-fired combustion turbine; and (ii))~~ counted  
5 towards meeting the biennial conservation target in the same manner as  
6 other production conservation savings.

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

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

12 (2)(a) Each qualifying utility shall use eligible renewable  
13 resources ~~((or))~~, acquire equivalent renewable energy credits, or use  
14 conservation achieved in excess of a biennial acquisition target under  
15 subsection (1) of this section, or a combination of ((both)) these  
16 options, to meet the following annual targets:

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

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

21 (iii) At least ~~((fifteen))~~ sixteen percent of its load by January  
22 1, 2020, and each year thereafter through December 31, 2024; and

23 (iv) At least twenty-one percent of its load by January 1, 2025,  
24 and each year thereafter.

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

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

33 (d) A qualifying utility is considered in compliance with an annual  
34 target in (a) of this subsection if: (i) In any given target year its  
35 load growth, measured as load served in the target year compared to the  
36 utility's annual average load served in 2010 and 2011, is less than the  
37 target in (a) of this subsection for that year; and (ii) the utility

1 meets one hundred percent of any increase in load for that target year  
2 with eligible renewable resources or renewable energy credits.

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

14 ~~((e))~~ (f) The requirements of this section may be met for any  
15 given target year with renewable energy credits produced during that  
16 year, the preceding year, or the subsequent year. Qualifying utilities  
17 may purchase or contract for purchase renewable energy credits in  
18 advance of or throughout the target year, the preceding year, or the  
19 subsequent year for meeting the requirements of this section. Each  
20 renewable energy credit may be used only once to meet the requirements  
21 of this section.

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

24 (i) Eligible renewable resources or distributed generation where  
25 the associated renewable energy credits are owned by a separate entity;  
26 ~~((e))~~

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

30 (iii) Efficiency improvements to hydroelectric generation  
31 facilities whose energy output is marketed by the Bonneville power  
32 administration that is attributable to any other utility other than the  
33 qualifying utility.

34 ~~((g))~~ (h) Where fossil and combustible renewable resources are  
35 cofired in one generating unit located in the Pacific Northwest where  
36 the cofiring commenced after March 31, 1999, the unit shall be  
37 considered to produce eligible renewable resources in direct proportion

1 to the percentage of the total heat value represented by the heat value  
2 of the renewable resources.

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

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

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

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

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

17 (k) A qualifying utility shall be considered in compliance with an  
18 annual target in (a) of this subsection if events beyond the reasonable  
19 control of the utility that could not have been reasonably anticipated  
20 or ameliorated prevented it from meeting the renewable energy target.  
21 Such events include weather-related damage, mechanical failure,  
22 strikes, lockouts, and actions of a governmental authority that  
23 adversely affect the generation, transmission, or distribution of an  
24 eligible renewable resource under contract to a qualifying utility.

25 (3) Utilities that become qualifying utilities after December 31,  
26 2006, shall meet the requirements in this section on a time frame  
27 comparable in length to that provided for qualifying utilities as of  
28 December 7, 2006.

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

31 (1) On or before June 1, 2012, and annually thereafter, each  
32 qualifying utility shall report to the department on its progress in  
33 the preceding year in meeting the targets established in RCW  
34 19.285.040, including expected electricity savings from the biennial  
35 conservation target, expenditures on conservation, actual electricity  
36 savings results, the utility's annual load for the prior two years, the  
37 amount of megawatt-hours needed to meet the annual renewable energy



1 target, the amount of megawatt-hours of each type of eligible renewable  
2 resource acquired, the type and amount of renewable energy credits  
3 acquired, and the percent of its total annual retail revenue  
4 requirement invested in the incremental cost of eligible renewable  
5 resources and the cost of renewable energy credits. ~~((For each year  
6 that a qualifying utility elects to demonstrate alternative compliance  
7 under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in  
8 its annual report relevant data to demonstrate that it met the criteria  
9 in that section.))~~ A qualifying utility may submit its report to the  
10 department in conjunction with its annual obligations in chapter 19.29A  
11 RCW.

12 (2) A qualifying utility that is an investor-owned utility shall  
13 also report all information required in subsection (1) of this section  
14 to the commission, and on or before June 1, 2014, and annually  
15 thereafter, report to the commission its compliance in meeting the  
16 targets established in RCW 19.285.040. All other qualifying utilities  
17 shall also make all information required in subsection (1) of this  
18 section available to the auditor, and on or before June 1, 2014, and  
19 annually thereafter, make available to the auditor its determination of  
20 compliance in meeting the targets established in RCW 19.285.040. For  
21 each year that a qualifying utility elects to demonstrate alternative  
22 compliance under RCW 19.285.040(2) or 19.285.050(1), it must include in  
23 its annual report relevant data to demonstrate that it met the criteria  
24 in that section.

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

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

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

32 (2) The department shall adopt rules concerning only process,  
33 timelines, and documentation to ensure the proper implementation of  
34 this chapter as it applies to qualifying utilities that are not  
35 investor-owned utilities. Those rules include, but are not limited to,  
36 rules associated with a qualifying utility's development of  
37 conservation targets under RCW 19.285.040(1); a qualifying utility's

1 decision to pursue alternative compliance in RCW 19.285.040(2) (~~(d)~~)  
2 (e) or (~~(i)~~) (k) or 19.285.050(1); and the format and content of  
3 reports required in RCW 19.285.070. Nothing in this subsection may be  
4 construed to restrict the rate-making authority of the commission or a  
5 qualifying utility as otherwise provided by law.

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

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

13 (b) Within six months of the adoption by the Pacific Northwest  
14 electric power and conservation planning council of each of its  
15 regional power plans, the department shall initiate rule making to  
16 consider adopting any changes in methodologies used by the Pacific  
17 Northwest electric power and conservation planning council that would  
18 impact a qualifying utility's conservation potential assessment in  
19 accordance with RCW 19.285.040(1).

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

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

30 (e) The department shall report to the legislature by December 1,  
31 2009, with recommendations on implementing the state's policy of  
32 recognizing and promoting the use of low-cost hydroelectric generation  
33 to firm, shape, and integrate other renewable energy resources into the  
34 northwestern electric grid for delivery to Washington residents. The  
35 report must include recommendations for promoting hydroelectric  
36 generation based upon the economic and environmental benefits of using  
37 hydroelectric generation in place of fossil fuel-fired generation for  
38 integration services. The report must include results from existing

1 studies and analyses from the Pacific Northwest electric power and  
2 conservation planning council, the Bonneville power administration, and  
3 other relevant organizations. The department shall also consider  
4 information and recommendations from integration service providers and  
5 users.

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