

# HOUSE BILL REPORT

## HB 2688

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### As Reported by House Committee On: Environment

**Title:** An act relating to creating a review process to determine whether a proposed electric generation project or conservation resource qualifies to meet a target under RCW 19.285.040

**Brief Description:** Creating a review process to determine whether a proposed electric generation project or conservation resource qualifies to meet a target under RCW 19.285.040.

**Sponsors:** Representatives Upthegrove, Fitzgibbon and Cody.

#### **Brief History:**

##### **Committee Activity:**

Environment: 1/27/12, 1/31/12 [DPS].

#### **Brief Summary of Substitute Bill**

- Allows consumer owned utilities and project developers to seek an advisory opinion from the Washington State University Extension Energy Program as to whether a proposed project or resource qualifies under Initiative 937 before building or acquiring the project or resource.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Fitzgibbon, Hansen, Jinkins, Nealey, Pearson, Takko and Wylie.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Crouse, Morris, Shea and Taylor.

**Staff:** Kara Durbin (786-7133).

#### **Background:**

The Energy Independence Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Approved by voters in 2006, the Energy Independence Act, also known as Initiative 937 (I-937), requires electric utilities with 25,000 or more customers to meet targets for energy conservation and for using eligible renewable resources. Utilities that must comply with I-937 are called qualifying utilities.

#### Energy Conservation Assessments and Targets.

Each qualifying electric utility must pursue all available conservation that is cost-effective, reliable, and feasible. By January 1, 2010, each qualifying utility must assess the conservation it can achieve through 2019, and update the assessments every two years for the next 10-year period. Beginning January 2010, each qualifying utility must meet biennial conservation targets that are consistent with its conservation assessments.

#### Eligible Renewable Resource Targets and Compliance Dates.

Each qualifying utility must use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

- at least 3 percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
- at least 9 percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
- at least 15 percent of its load by January 1, 2020, and each year thereafter.

#### Eligible Renewable Resource.

"Eligible renewable resource" includes: (1) wind; (2) solar; (3) geothermal energy; (4) landfill and sewage gas; (5) wave and tidal power; and (6) certain biomass and biodiesel fuels. Biomass is classified as an eligible renewable resource if it is derived from animal waste and solid organic fuels from wood, forest, or field residues and dedicated energy crops. Biomass derived from the following is not considered an eligible renewable resource: wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; black liquor by-product from paper production; wood from old growth forests; and municipal solid waste.

Electricity produced from an eligible renewable resource must be generated in a facility that started operating after March 31, 1999. The facility must either be located in the Pacific Northwest or the electricity from the facility must be delivered into the state on a real-time basis. Incremental electricity produced from efficiency improvements at hydropower facilities owned by qualifying utilities is also an eligible renewable resource if the improvements were completed after March 31, 1999.

#### Determining Compliance.

Under I-937, the State Auditor's Office is responsible for reviewing documentation and reporting submitted by qualifying utilities that are consumer owned utilities and determining whether a utility has complied with the law. For investor owned utilities, the Utilities and Transportation Commission (UTC) assesses compliance.

Investor owned utilities seeking an upfront determination as to whether a specific proposal would qualify as an eligible renewable resource under I-937 may file a petition for a declaratory order with the UTC.

Consumer owned utilities do not have this option available to them under current law. However, any utility or project developer can seek an advisory opinion from the I-937 Technical Working Group (TWG) as to whether a particular technology or resource is an eligible renewable resource under I-937. This TWG is made up of staff from the Department of Commerce and the UTC. Such advisory opinions are not binding on the State Auditor, nor do they supersede the declaratory order process available to investor owned utilities through the UTC.

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### **Summary of Substitute Bill:**

A consumer owned utility or a project developer may seek an advisory opinion from the Washington State University Extension Energy Program (WSU Energy Program) as to whether a proposed electric generation project or conservation resource qualifies to meet a target under I-937. This advisory opinion must include a legal analysis.

In forming an advisory opinion, the WSU Energy Program must: (1) consider, and may rely on, previous opinions issued by the I-937 TWG; (2) consult with technical and legal staff at the Department of Commerce; and (3) solicit comments from interested parties. The WSU Energy Program must prioritize any application regarding a project or resource that previously received an affirmative advisory opinion from the I-937 TWG.

Within 90 days of receiving an application for an advisory opinion, the WSU Energy Program must issue a signed advisory opinion indicating whether a proposed project or resource qualifies to meet a target. The governing board of the applicant must either adopt or reject the advisory opinion after giving notice and holding a public hearing.

The State Auditor must consider any project reviewed and adopted by a governing board as being in compliance with I-937 if: (1) the advisory opinion affirmatively qualified the project or resource; and (2) the project or resource is built or acquired as proposed.

An electric generation project reviewed and adopted by a governing board may produce renewable energy credits.

The WSU Energy Program may require an applicant to pay an application fee to cover the cost of reviewing a project and preparing an advisory opinion. The WSU Energy Program may adopt rules to implement this process.

### **Substitute Bill Compared to Original Bill:**

The substitute bill requires the WSU Energy Program to prioritize any application regarding a project or resource that previously received an affirmative advisory opinion from the I-937 TWG. Comments must be solicited and considered from interested parties.

The substitute bill clarifies that the State Auditor must consider any project reviewed and adopted by a governing board as being in compliance with I-937 if: (1) the advisory opinion affirmatively qualified the project or resource; and (2) the governing board of the utility adopts the advisory opinion. Any electric generation project reviewed and adopted under this process may produce renewable energy credits.

The substitute bill authorizes the WSU Energy Program to adopt rules to implement the advisory opinion process.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Having greater certainty upfront that a project will qualify is beneficial. We would like some assurance that a previous positive advisory opinion would still stand with this process. This seems like a procedural change in the right direction. It provides greater certainty to project developers and utilities. The bill should be more explicit about including input from the public.

(With concerns) This was one of the recommendations from the State Energy Strategy. This process will apply to a narrow range of projects. Most projects are clearly defined within the law and this process will not be necessary. This bill should consider adding a provision to designate an entity in our state as the Western Renewable Energy Generation Information System (WREGIS) Administrator, which would help provide more clarity and certainty in this area.

(Opposed) None.

**Persons Testifying:** (In support) Representative Upthegrove, prime sponsor; Brad Boswell, Nucor Corporation; Dave Arbaugh, Chelan Public Utility District; Kim Drury, Northwest Energy Coalition; and Rose Feliciano, Seattle City Light.

(With concerns) Tony Usibelli, Washington State Department of Commerce; and Kathleen Collins, PacifiCorp.

**Persons Signed In To Testify But Not Testifying:** None.