

# HOUSE BILL REPORT

## SSB 6414

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### As Passed House - Amended:

February 29, 2012

**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:** Senate Committee on Energy, Natural Resources & Marine Waters (originally sponsored by Senator Ranker).

### Brief History:

#### Committee Activity:

Environment: 2/16/12, 2/17/12 [DP].

#### Floor Activity:

Passed House - Amended: 2/29/12, 98-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Allows consumer-owned utilities and project developers to seek an advisory opinion from the Department of Commerce 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:** Do pass. Signed by 11 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Fitzgibbon, Hansen, Jinkins, Pollet, Takko, Taylor and Wylie.

**Minority Report:** Do not pass. Signed by 1 member: Representative Morris.

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

### Background:

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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.*

## The Energy Independence Act.

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 auditing the compliance of public utility districts and municipal utilities that are qualifying utilities. For cooperatives and mutual corporations that are qualifying utilities, an independent auditor selected by the

qualifying utility is responsible for auditing compliance. In both cases, the Attorney General is responsible for enforcing compliance. For investor owned utilities, the Utilities and Transportation Commission (UTC) determines and enforces compliance.

Before making an investment in an electric generation project or a conservation resource, an investor owned utility may seek an predetermination of eligibility under I-937 from the UTC by filing a petition for a declaratory order. Consumer-owned utilities do not have this option. However, any utility or project developer can seek an advisory opinion from the I-937 Technical Working Group (TWG) staffed by the Department of Commerce and the UTC. Such advisory opinions are not binding on the State Auditor or an independent auditor, nor do they supersede the declaratory order process available to investor-owned utilities through the UTC.

**Summary of Bill:**

A consumer-owned utility or a project developer may seek an advisory opinion from the Department of Commerce (Department) as to whether a proposed electric generation project or conservation resource would qualify to meet a target under I-937. This advisory opinion must include a legal analysis.

In forming an advisory opinion, the Department must: (1) consider, and may rely on, previous opinions issued by the I-937 TWG at the Department; and (2) solicit comments from interested parties. The Department 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 Director of the Department 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 under this process may produce renewable energy credits.

The Department may charge an application fee and may adopt rules to implement this process.

The authority of any governing board of a consumer-owned utility to make an independent determination as to whether a proposed electric generation project or conservation resource may qualify under I-937 is preserved.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This addresses uncertainty for a utility. Investor owned utilities have a process through the UTC to have a project determined whether it is in compliance. The consumer-owned utilities do not have a similar process. This will give the utility a third party opinion on whether the resource qualifies as renewable or as conservation. It makes good business sense to create a process upfront. We believe more clarity will encourage investments in this area. This is a voluntary process. There are some utilities that will not take advantage of this; some will prefer not to. We believe Washington State University has the analytic capability to do this analysis. Only after the local governing board accepts the opinion does it become binding on the auditor.

(Opposed) None.

**Persons Testifying:** Jeff Smith, Chelan Public Utility District; Rose Feliciano, Seattle City Light; Robert Mack, Tacoma Public Utilities; Brad Boswell, Nucor Steel; and Nancy Hirsh Northwest Energy Coalition.

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