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HOUSE BILL 2557

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representative Morris

Read first time 01/17/12. Referred to Committee on Environment.

1            AN ACT Relating to creating an additional compliance mechanism for  
2 the energy independence act by allowing the use of alternative  
3 compliance credits; amending RCW 19.285.040, 19.285.060, 43.180.260,  
4 and 19.285.030; and adding a new section to chapter 43.180 RCW.

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

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

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

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

17            (b) Beginning January 2010, each qualifying utility shall establish  
18 and make publicly available a biennial acquisition target for cost-  
19 effective conservation consistent with its identification of achievable

1 opportunities in (a) of this subsection, and meet that target during  
2 the subsequent two-year period. At a minimum, each biennial target  
3 must be no lower than the qualifying utility's pro rata share for that  
4 two-year period of its cost-effective conservation potential for the  
5 subsequent ten-year period.

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

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

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

24 (2)(a) Each qualifying utility shall use eligible renewable  
25 resources (~~(or)~~), acquire equivalent renewable energy credits, advanced  
26 renewable resource compliance credits, or a combination (~~(of both)~~)  
27 thereof, to meet the following annual targets:

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

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

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

34 (b) A qualifying utility may count distributed generation at double  
35 the facility's electrical output if the utility: (i) Owns or has  
36 contracted for the distributed generation and the associated renewable  
37 energy credits; or (ii) has contracted to purchase the associated  
38 renewable energy credits.

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

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

15 (e) The requirements of this section may be met for any given year  
16 with renewable energy credits produced during that year, the preceding  
17 year, or the subsequent year. Each renewable energy credit may be used  
18 only once to meet the requirements of this section.

19 (f) In complying with the targets established in (a) of this  
20 subsection, a qualifying utility may not count:

21 (i) Eligible renewable resources or distributed generation where  
22 the associated renewable energy credits are owned by a separate entity;  
23 or

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

27 (g) Where fossil and combustible renewable resources are cofired in  
28 one generating unit located in the Pacific Northwest where the cofiring  
29 commenced after March 31, 1999, the unit shall be considered to produce  
30 eligible renewable resources in direct proportion to the percentage of  
31 the total heat value represented by the heat value of the renewable  
32 resources.

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

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

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

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

6 (i) A qualifying utility shall be considered in compliance with an  
7 annual target in (a) of this subsection if events beyond the reasonable  
8 control of the utility that could not have been reasonably anticipated  
9 or ameliorated prevented it from meeting the renewable energy target.  
10 Such events include weather-related damage, mechanical failure,  
11 strikes, lockouts, and actions of a governmental authority that  
12 adversely affect the generation, transmission, or distribution of an  
13 eligible renewable resource under contract to a qualifying utility.

14 (3) Utilities that become qualifying utilities after December 31,  
15 2006, shall meet the requirements in this section on a time frame  
16 comparable in length to that provided for qualifying utilities as of  
17 December 7, 2006.

18 **Sec. 2.** RCW 19.285.060 and 2007 c 1 s 6 are each amended to read  
19 as follows:

20 (1) Except as provided in subsection (2) of this section, a  
21 qualifying utility that fails to comply with the energy conservation or  
22 renewable energy targets established in RCW 19.285.040 shall pay an  
23 administrative penalty to the state of Washington in the amount of  
24 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,  
25 this penalty shall be adjusted annually according to the rate of change  
26 of the inflation indicator, gross domestic product-implicit price  
27 deflator, as published by the bureau of economic analysis of the United  
28 States department of commerce or its successor.

29 (2) A qualifying utility that does not meet an annual renewable  
30 energy target established in RCW 19.285.040(2) is exempt from the  
31 administrative penalty in subsection (1) of this section for that year  
32 if the commission for investor-owned utilities or the auditor for all  
33 other qualifying utilities determines that the utility complied with  
34 RCW 19.285.040(2) (d) or (i) or 19.285.050(1).

35 (3) A qualifying utility must notify its retail electric customers  
36 in published form within three months of incurring a penalty regarding  
37 the size of the penalty and the reason it was incurred.

1 (4) The commission shall determine if an investor-owned utility may  
2 recover the cost of this administrative penalty in electric rates, and  
3 may consider providing positive incentives for an investor-owned  
4 utility to exceed the targets established in RCW 19.285.040.

5 (5) A qualifying utility may acquire advanced renewable resource  
6 compliance credits from the sustainable energy trust program under RCW  
7 43.180.260 in the amount of twenty-five dollars for each megawatt hour  
8 of projected eligible renewable resource need. A qualifying utility  
9 may acquire advanced renewable resource compliance credits up to five  
10 years in advance of an eligible renewable resource target. A  
11 qualifying utility may not acquire more than twenty percent of its  
12 projected eligible renewable resource target requirements for any given  
13 target year.

14 (6) Administrative penalties and advanced renewable resource  
15 compliance credit proceeds collected under this chapter shall be  
16 deposited into the energy independence act special account (~~(which is~~  
17 ~~hereby))~~ created in RCW 43.180.260(2)(b). (~~(All receipts from~~  
18 ~~administrative penalties collected under this chapter must be deposited~~  
19 ~~into the account. Expenditures from the account may be used only for~~  
20 ~~the purchase of renewable energy credits or for energy conservation~~  
21 ~~projects at public facilities, local government facilities, community~~  
22 ~~colleges, or state universities. The state shall own and retire any~~  
23 ~~renewable energy credits purchased using moneys from the account. Only~~  
24 ~~the director of general administration or the director's designee may~~  
25 ~~authorize expenditures from the account. The account is subject to~~  
26 ~~allotment procedures under chapter 43.88 RCW, but an appropriation is~~  
27 ~~not required for expenditures.))~~

28 (6) For a qualifying utility that is an investor-owned utility, the  
29 commission shall determine compliance with the provisions of this  
30 chapter and assess penalties for noncompliance as provided in  
31 subsection (1) of this section.

32 (7) For qualifying utilities that are not investor-owned utilities,  
33 the auditor is responsible for auditing compliance with this chapter  
34 and rules adopted under this chapter that apply to those utilities and  
35 the attorney general is responsible for enforcing that compliance.

36 **Sec. 3.** RCW 43.180.260 and 2009 c 65 s 3 are each amended to read  
37 as follows:

1 (1)(a) If economically feasible, the commission shall develop and  
2 implement a sustainable energy trust program to provide financing for  
3 qualified improvement projects. In developing the sustainable energy  
4 trust program, the commission shall establish eligibility criteria for  
5 financing that will enable it to choose eligible applicants who are  
6 likely to repay loans made or acquired by the commission and funded  
7 from the proceeds of commission bonds.

8 ~~((+2))~~ (b) The commission shall, if economically feasible:

9 ~~((+a))~~ (i) Issue bonds, as defined in RCW 43.180.020, for the  
10 purpose of financing loans for qualified energy efficiency and  
11 renewable energy improvement projects in accordance with RCW  
12 43.180.150;

13 ~~((+b))~~ (ii) Participate fully in federal and other governmental  
14 programs and take actions that are necessary and consistent with this  
15 chapter to secure to itself and the people of the state the benefits of  
16 programs to promote energy efficiency and renewable energy  
17 technologies;

18 ~~((+c))~~ (iii) Contract with a certifying authority to accept  
19 applications for energy efficiency and renewable energy improvement  
20 projects, to review applications, including binding fixed price bids  
21 for the improvements, and to approve qualified improvements for  
22 financing by the commission. For solar electric systems, the  
23 certifying authority must use an application certification process  
24 similar to the investment cost recovery incentive application process  
25 provided under RCW 82.16.120. No work by a certifying authority may  
26 commence under this section until a request has been made by the  
27 commission; and

28 ~~((+d))~~ (iv) Before entering into a contract with a certifying  
29 authority as defined in RCW 43.180.020(2)(b), consult with the  
30 Washington State University ~~((energy))~~ extension ~~((extension-energy))~~  
31 energy program to determine which potential improvement technologies  
32 are appropriate.

33 ~~((+3))~~ (2)(a) The commission shall develop a program to offer  
34 advanced renewable resource compliance credits to qualifying utilities  
35 as provided under RCW 19.285.060.

36 (b) The energy independence act special account is created in the  
37 custody of the state treasurer. All receipts from administrative  
38 penalties and advanced renewable resource compliance credit proceeds

1 under chapter 19.285 RCW and interest payments on loans authorized  
2 under this chapter must be deposited into the account. Expenditures  
3 from the account may be used only to provide grants and loans to  
4 support the development of distributed generation and energy  
5 conservation projects. Only the commission may authorize expenditures  
6 from the account. The account is subject to allotment procedures under  
7 chapter 43.88 RCW, but an appropriation is not required for  
8 expenditures.

9 (3) For the purposes of this section:

10 (a) "Advanced renewable resource compliance credit" means a credit  
11 sold by the commission to a qualifying utility that is used to satisfy  
12 a portion of the qualifying utility's annual renewable energy target  
13 under RCW 19.285.040(2);

14 (b) "Energy conservation" has the same meaning as "conservation"  
15 defined in RCW 19.285.030; and

16 (c) "Qualifying utility" has the same meaning as defined in RCW  
17 19.285.030.

18 (4) No general fund resources may be expended to implement this  
19 section.

20 NEW SECTION. Sec. 4. A new section is added to chapter 43.180 RCW  
21 to read as follows:

22 (1) The commission shall convene a work group to investigate and  
23 make recommendations on the use of energy efficiency credits for energy  
24 conservation compliance purposes under RCW 19.285.040 and the creation  
25 of a program at the commission to sell energy efficiency credits to  
26 qualifying utilities.

27 (2) The work group must consider and make recommendations on the  
28 following:

29 (a) The design of a program that authorizes the commission to sell  
30 energy efficiency credits to qualifying utilities for energy  
31 conservation compliance purposes under RCW 19.285.040;

32 (b) Whether energy efficiency credits purchased by a qualifying  
33 utility should be allowed to count at two times the amount of energy  
34 conservation acquired;

35 (c) Whether energy efficiency credits purchased by a qualifying  
36 utility may represent conservation that might not be built at the time

1 of purchase but could be verified up to three years after the calendar  
2 year in which the credits are sold;

3 (d) The price at which the commission may sell energy efficiency  
4 credits to qualifying utilities;

5 (e) The design of a program for the acquisition of conservation  
6 through making financial assistance, in the form of loans, grants, or  
7 similar products, available to residential, nonprofit, governmental,  
8 commercial, and industrial energy users for the purpose of  
9 accomplishing energy conservation measures;

10 (f) A system for the verification of the amount of conservation  
11 acquired by such energy conservation measures through an energy audit  
12 certifying the amount of conservation obtained;

13 (g) A system to track the verified conservation, the related energy  
14 efficiency credits, and the bundling of multiple verified conservation  
15 sources into any single energy efficiency credit; and

16 (h) A reasonable fee that the commission may charge for operating  
17 an energy efficiency credit program.

18 (3) No general fund resources may be expended to implement this  
19 section.

20 (4) For purposes of this section, the definitions in RCW 43.19.670  
21 apply, except as follows:

22 (a) "Conservation" has the meaning given in RCW 19.285.030.

23 (b) "Energy audit" means a determination of the energy consumption  
24 characteristics of a building or facility that consists of the  
25 following elements:

26 (i) An energy consumption survey that identifies the type, amount,  
27 and rate of energy consumption of the building or facility and its  
28 major energy systems.

29 (ii) A walk-through survey that determines appropriate energy  
30 conservation maintenance and operating procedures and indicates the  
31 need, if any, for the acquisition and installation of energy  
32 conservation measures and energy management systems.

33 (iii) An investment grade audit, which is an intensive engineering  
34 analysis of energy conservation and management measures for the  
35 facility, net energy savings, and a cost-effectiveness determination.

36 (c) "Energy efficiency credit" means a tradable certificate of  
37 proof of at least one megawatt-hour of conservation where the  
38 conservation is verified by an energy audit. The certificate includes



1 all of the nonpower attributes associated with that amount of  
2 conservation, and the certificate must be verified by a tracking system  
3 selected by the commission.

4 **Sec. 5.** RCW 19.285.030 and 2009 c 565 s 20 are each amended to  
5 read as follows:

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

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

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

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

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

20 (5) "Cost-effective" has the same meaning as defined in RCW  
21 80.52.030.

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

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

26 (8) "Department" means the department of commerce 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 freshwater that commences operation after March 31,  
33 1999, where: (i) The facility is located in the Pacific Northwest; or  
34 (ii) the electricity from the facility is delivered into Washington  
35 state on a real-time basis without shaping, storage, or integration  
36 services; or

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

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

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

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

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

25 (15) "Public facility" has the same meaning as defined in RCW  
26 39.35C.010.

27 (16) "Qualifying utility" means an electric utility, as the term  
28 "electric utility" is defined in RCW 19.29A.010, that serves more than  
29 twenty-five thousand customers in the state of Washington. The number  
30 of customers served may be based on data reported by a utility in form  
31 861, "annual electric utility report," filed with the energy  
32 information administration, United States department of energy.

33 (17) "Renewable energy credit" means a tradable certificate of  
34 proof of at least one megawatt-hour of an eligible renewable resource  
35 where the generation facility is not powered by freshwater, the  
36 certificate includes all of the nonpower attributes associated with  
37 that one megawatt-hour of electricity, and the certificate is verified

1 by a renewable energy credit tracking system selected by the  
2 department.

3 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
4 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
5 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
6 fuel as defined in RCW 82.29A.135 that is not derived from crops raised  
7 on land cleared from old growth or first-growth forests where the  
8 clearing occurred after December 7, 2006; and (i) biomass energy based  
9 on animal waste or solid organic fuels from wood, forest, or field  
10 residues, or dedicated energy crops that do not include (i) wood pieces  
11 that have been treated with chemical preservatives such as creosote,  
12 pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor by-  
13 product from paper production; (iii) wood from old growth forests; or  
14 (iv) municipal solid waste.

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

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

20 (21) "Advanced renewable resource compliance credit" means a credit  
21 sold by the housing finance commission to a qualifying utility as  
22 provided in RCW 19.285.060 that is used to satisfy a portion of the  
23 qualifying utility's annual renewable energy target under RCW  
24 19.285.040(2).

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