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**SUBSTITUTE SENATE BILL 5575**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hatfield, Delvin, Eide, Schoesler, Haugen, Shin, Kilmer, Hobbs, Becker, Honeyford, Conway, and Sheldon)

READ FIRST TIME 01/23/12.

1       AN ACT Relating to promoting and sustaining investment and  
2 employment in economically distressed communities dependent on  
3 agricultural or natural resource industries by recognizing certain  
4 biomass energy facilities constructed before March 31, 1999, as an  
5 eligible renewable resource; amending RCW 19.285.030 and 19.285.040;  
6 adding a new section to chapter 19.285 RCW; and creating a new section.

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

8       NEW SECTION. **Sec. 1.** (1) The legislature finds that: (a) Pulping  
9 liquors can be used to reduce harmful pollution and produce electricity  
10 and thermal energy that enables pulp and paper facilities to be highly  
11 energy efficient; (b) biomass facilities and pulp and paper mills are  
12 typically located in communities that are disproportionately affected  
13 by economic downturns; (c) mill closures have occurred throughout the  
14 state for more than a decade and the remaining ones have become all the  
15 more dependent on selling wood residuals, which are used for  
16 electricity generation, in order to sustain their economic viability;  
17 (d) employment at pulp and paper mills in the state has also declined  
18 significantly, most recently in Grays Harbor and Snohomish counties;  
19 (e) wood derived biomass is a renewable fuel for generating electricity

1 and considered carbon-neutral under the laws of the state of  
2 Washington; and (f) using food processing residues, biosolids, and yard  
3 waste to generate renewable electricity can benefit rural economies,  
4 decrease the amount of solid waste that requires disposal, and reduce  
5 greenhouse gas emissions that result from organic decay.

6 (2) The legislature declares that, by promoting the generation of  
7 renewable energy from biomass, particularly in economically distressed  
8 communities, it intends to ensure greater economic stability for the  
9 communities that have suffered heavy job losses and chronic  
10 unemployment.

11 (3) The legislature further declares that: (a) The owners of  
12 qualified biomass energy facilities that must comply with the renewable  
13 energy standards under the energy independence act of 2006, either as  
14 a matter of law or contractual obligation, should be permitted to use  
15 qualified biomass energy credits to meet their obligations; (b)  
16 qualified biomass energy should not be sold as an eligible renewable  
17 resource unless it is bundled with renewable energy credits that are  
18 derived from an eligible renewable resource that is not qualified  
19 biomass energy; and (c) electricity that is generated by a biomass  
20 energy facility that entered commercial operation after March 31, 1999,  
21 from the combustion of organic by-products of pulping and the wood  
22 manufacturing process should be treated as an eligible renewable  
23 resource.

24 **Sec. 2.** RCW 19.285.030 and 2009 c 565 s 20 are each amended to  
25 read as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

28 (1) "Attorney general" means the Washington state office of the  
29 attorney general.

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

35 (3) "Commission" means the Washington state utilities and  
36 transportation commission.

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

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

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

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

10 (8) "Department" means the department of commerce or its successor.

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

14 (10) "Eligible renewable resource" means:

15 (a) Electricity from a generation facility powered by a renewable  
16 resource other than freshwater that commences operation after March 31,  
17 1999, where: (i) The facility is located in the Pacific Northwest; or  
18 (ii) the electricity from the facility is delivered into Washington  
19 state on a real-time basis without shaping, storage, or integration  
20 services; (~~or~~)

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

28 (c) Qualified biomass energy.

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

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

34 (13) "Nonpower attributes" means all environmentally related  
35 characteristics, exclusive of energy, capacity reliability, and other  
36 electrical power service attributes, that are associated with the  
37 generation of electricity from a renewable resource, including but not  
38 limited to the facility's fuel type, geographic location, vintage,

1 qualification as an eligible renewable resource, and avoided emissions  
2 of pollutants to the air, soil, or water, and avoided emissions of  
3 carbon dioxide and other greenhouse gases.

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

8 (15) "Public facility" has the same meaning as defined in RCW  
9 39.35C.010.

10 (16) "Qualifying utility" means an electric utility, as the term  
11 "electric utility" is defined in RCW 19.29A.010, that serves more than  
12 twenty-five thousand customers in the state of Washington. The number  
13 of customers served may be based on data reported by a utility in form  
14 861, "annual electric utility report," filed with the energy  
15 information administration, United States department of energy.

16 (17) "Renewable energy credit" means a tradable certificate of  
17 proof of at least one megawatt-hour of an eligible renewable resource  
18 where the generation facility is not powered by freshwater((~~τ~~)). The  
19 certificate includes all of the nonpower attributes associated with  
20 that one megawatt-hour of electricity, and the certificate is verified  
21 by a renewable energy credit tracking system selected by the  
22 department.

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

35 (19)(a) "Biomass energy" includes: (i) Organic by-products of  
36 pulping and the wood manufacturing process; (ii) animal waste; (iii)  
37 solid organic fuels from wood; (iv) forest or field residues; (v)  
38 wooden demolition or construction debris; (vi) food waste; (vii)

1 liquors derived from algae and other sources; (viii) dedicated energy  
2 crops; (ix) biosolids; (x) yard waste; and (xi) food processing  
3 residues.

4 (b) "Biomass energy" does not include: (i) Wood pieces that have  
5 been treated with chemical preservatives such as creosote,  
6 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth  
7 forests; or (iii) municipal solid waste.

8 (20) "Qualified biomass energy" means electricity produced from a  
9 biomass energy facility that commenced operation before March 31, 1999.

10 (21) "Qualified renewable energy credit" means a certificate of  
11 proof of at least one megawatt-hour of qualified biomass energy that is  
12 generated by: (a) A qualifying utility; or (b) an industrial facility  
13 that is served by a qualified utility. The certificate includes all of  
14 the nonpower attributes associated with that one megawatt-hour of  
15 electricity, and the certificate is verified by the Washington State  
16 University extension energy program.

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

20 ((+20)) (23) "Year" means the twelve-month period commencing  
21 January 1st and ending December 31st.

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

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

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

33 (b) Beginning January 2010, each qualifying utility shall establish  
34 and make publicly available a biennial acquisition target for cost-  
35 effective conservation consistent with its identification of achievable  
36 opportunities in (a) of this subsection, and meet that target during  
37 the subsequent two-year period. At a minimum, each biennial target

1 must be no lower than the qualifying utility's pro rata share for that  
2 two-year period of its cost-effective conservation potential for the  
3 subsequent ten-year period.

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

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

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

22 (2)(a) Each qualifying utility shall use eligible renewable  
23 resources or acquire equivalent renewable energy credits, qualified  
24 renewable energy credits, or ((a)) any combination of ((both)) them, to  
25 meet the following annual targets:

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

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

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

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

37 (c) In meeting the annual targets in (a) of this subsection, a

1 qualifying utility shall calculate its annual load based on the average  
2 of the utility's load for the previous two years.

3 (d) 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) The requirements of this section may be met for any given year  
15 with renewable energy credits or qualified renewable energy credits,  
16 produced during that year, the preceding year, or the subsequent year.  
17 Each renewable energy credit may be used only once to meet the  
18 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 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.285 RCW  
19 to read as follows:

20 A qualified renewable energy credit may be used by a qualifying  
21 utility that owns a qualified biomass energy facility or that is  
22 interconnected with an industrial facility that hosts a qualified  
23 biomass energy facility to meet its compliance obligation under RCW  
24 19.285.040(2). A qualifying utility that produces or receives a  
25 qualified renewable energy credit may not transfer or sell the credit  
26 to another person or entity, unless a transfer is necessary in order to  
27 prove compliance under RCW 19.285.040(2). Qualified biomass energy may  
28 not be sold as an eligible renewable resource unless it is bundled with  
29 an eligible renewable resource that is not qualified biomass energy.

30 NEW SECTION. **Sec. 5.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

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