

# SENATE BILL REPORT

## SB 5168

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As of January 27, 2021

**Title:** An act relating to renewable and nonemitting resources analysis and advisory opinions.

**Brief Description:** Concerning renewable and nonemitting resources analysis and advisory opinions.

**Sponsors:** Senator Short.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/27/21.

**Brief Summary of Bill**

- Requires the Department of Commerce to provide an analysis and advisory opinion on whether a proposed electric generation project or energy transformation project would qualify under the Clean Energy Transformation Act at the request of an electric utility or project proponent.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Kimberly Cushing (786-7421)

**Background:** Clean Energy Transformation Act. In 2019, the Legislature passed the Clean Energy Transformation Act (CETA), which requires Washington's electric utilities to meet 100 percent of their retail electric load using non-emitting and renewable resources by January 1, 2045. Additionally, CETA requires electric utilities to eliminate coal-fired resources from their allocation of electricity by December 31, 2025, and make all retail sales of electricity greenhouse gas (GHG) neutral by January 1, 2030.

An electric utility may satisfy up to 20 percent of the GHG neutral standard with an alternative compliance option, such as investing in energy transformation projects. An

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energy transformation project must provide energy-related goods or services, other than the generation of electricity; result in a reduction of fossil fuel consumption and related GHG emissions; and provide benefits to electric utility customers.

Energy Independence Act and Pre-Approval Process for Eligible Projects or Resource. Approved by voters in 2006, the Energy Independence Act (EIA)—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. In 2012, the Legislature authorized project proponents or consumer-owned qualifying utilities to seek advisory opinions from the Department of Commerce (Commerce) on whether a proposed electric generation project or conservation resource would qualify under I-937.

An advisory opinion adopted by the governing body of a consumer-owned qualifying utility that will use the project or resource is binding on the auditors responsible for determining compliance with I-937, but only if: (1) the advisory opinion affirmatively qualifies the project or resource; (2) the governing board of the consumer-owned utility that will use the project or resource adopts the advisory opinion after public notice and hearing; and (3) the project or resource is built or acquired as proposed.

**Summary of Bill:** Commerce must provide an analysis and advisory opinion on whether a proposed electric generation or energy transformation project (project) qualifies to meet CETA requirements when requested by an electric utility or a person proposing a project.

The electric utility or proponent of a project to be used by an electric utility may apply for an advisory opinion from Commerce. The application must be in writing and must include an accurate description of the proposed project.

Commerce must solicit and consider comments from interested parties, including staff of a requesting utility, when forming an advisory opinion. The Commerce director must issue a signed advisory opinion and include a legal analysis on whether the proposed project qualifies to meet CETA requirements within 90 days of receiving an application.

Any project reviewed under this advisory opinion process must be deemed a compliant resource under CETA by any agency authorized to enforce CETA, including the Utilities and Transportation Commission (UTC), if the advisory opinion (1) affirmatively qualifies the project and (2) the project or resource is built or acquired as proposed in the application.

Commerce may require an applicant to pay a fee to cover the cost of reviewing the project and preparing an advisory opinion. Commerce may adopt rules to implement the advisory opinion process. A project is considered to be used by a utility if the utility takes ownership in whole or in part of the project or enters into a contract to purchase the energy and nonenergy attributes of a project.

Nothing in this bill preempts the authority of the governing board of a consumer-owned utility, the UTC, or any agency authorized to enforce the provisions of CETA from making a determination, independent of this advisory opinion process, on whether a project qualifies to meet CETA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: It makes sense to have an upfront process before developing energy transformation projects. It would be beneficial for ratepayers to know whether a project will qualify under CETA. The bill is intended to give reasonable certainty before making large investments in new resources that will comply with CETA. CETA is a departure from lowest-reasonable cost resource planning. This bill is modeled after similar provisions in the EIA. We are likely to face questions as new technologies emerge. We want to ensure this is a useful step that adds value and certainty to CETA.

CON: We support the intent behind an advisory process, but are concerned the bill gives Commerce authority over investor-owned utilities (IOUs), which should remain with the UTC. The authority should be limited to pertinent parts of CETA. The bill should be clear that the approval of individual projects should remain with UTC for IOUs and individual governing boards for consumer-owned utilities. Advisory opinions have been useful in implementing the EIA and could be useful under CETA.

OTHER: Commerce has issued more than 100 advisory opinions since 2012 concerning the EIA. Commerce provides less formal guidance on a regular basis for project developers, utilities, and brokers who make informed decisions about investments in renewable energy. Under the EIA, the ability to provide opinions and guidance is important because of complex eligibility guidelines. CETA has fewer restrictions on resource eligibility so there may be less need for guidance. However, there may be market participants that need assurances to reduce risk. A voluntary fee-based process may be a useful addition to CETA.

**Persons Testifying:** PRO: Senator Shelly Short, Prime Sponsor; John Rothlin, Avista.

CON: Joni Bosh, North West Energy Coalition.

OTHER: Glenn Blackmon, Washington Department of Commerce, State Energy Office.

**Persons Signed In To Testify But Not Testifying:** No one.