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**SUBSTITUTE SENATE BILL 5842**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Braun, Hatfield, Ericksen, Sheldon, and Chase)

1 AN ACT Relating to providing a compliance path based on sound  
2 utility planning under the energy independence act; and amending RCW  
3 19.285.040 and 19.285.080.

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

5 **Sec. 1.** RCW 19.285.040 and 2014 c 26 s 1 are each amended to  
6 read as follows:

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

9 (a) By January 1, 2010, using methodologies consistent with those  
10 used by the Pacific Northwest electric power and conservation  
11 planning council in the most recently published regional power plan  
12 as it existed on June 12, 2014, or a subsequent date as may be  
13 provided by the department or the commission by rule, each qualifying  
14 utility shall identify its achievable cost-effective conservation  
15 potential through 2019. Nothing in the rule adopted under this  
16 subsection precludes a qualifying utility from using its utility  
17 specific conservation measures, values, and assumptions in  
18 identifying its achievable cost-effective conservation potential. At  
19 least every two years thereafter, the qualifying utility shall review  
20 and update this assessment for the subsequent ten-year period.

1 (b) Beginning January 2010, each qualifying utility shall  
2 establish and make publicly available a biennial acquisition target  
3 for cost-effective conservation consistent with its identification of  
4 achievable opportunities in (a) of this subsection, and meet that  
5 target during the subsequent two-year period. At a minimum, each  
6 biennial target must be no lower than the qualifying utility's pro  
7 rata share for that two-year period of its cost-effective  
8 conservation potential for the subsequent ten-year period.

9 (c)(i) Except as provided in (c)(ii) and (iii) of this  
10 subsection, beginning on January 1, 2014, cost-effective conservation  
11 achieved by a qualifying utility in excess of its biennial  
12 acquisition target may be used to help meet the immediately  
13 subsequent two biennial acquisition targets, such that no more than  
14 twenty percent of any biennial target may be met with excess  
15 conservation savings.

16 (ii) Beginning January 1, 2014, a qualifying utility may use  
17 single large facility conservation savings in excess of its biennial  
18 target to meet up to an additional five percent of the immediately  
19 subsequent two biennial acquisition targets, such that no more than  
20 twenty-five percent of any biennial target may be met with excess  
21 conservation savings allowed under all of the provisions of this  
22 section combined. For the purposes of this subsection (1)(c)(ii),  
23 "single large facility conservation savings" means cost-effective  
24 conservation savings achieved in a single biennial period at the  
25 premises of a single customer of a qualifying utility whose annual  
26 electricity consumption prior to the conservation savings exceeded  
27 five average megawatts.

28 (iii) Beginning January 1, 2012, and until December 31, 2017, a  
29 qualifying utility with an industrial facility located in a county  
30 with a population between ninety-five thousand and one hundred  
31 fifteen thousand that is directly interconnected with electricity  
32 facilities that are capable of carrying electricity at transmission  
33 voltage(( $\tau$ )) may use cost-effective conservation from that industrial  
34 facility in excess of its biennial acquisition target to help meet  
35 the immediately subsequent two biennial acquisition targets, such  
36 that no more than twenty-five percent of any biennial target may be  
37 met with excess conservation savings allowed under all of the  
38 provisions of this section combined.

39 (d) In meeting its conservation targets, a qualifying utility may  
40 count high-efficiency cogeneration owned and used by a retail

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

13 (e) The commission may determine if a conservation program  
14 implemented by an investor-owned utility is cost-effective based on  
15 the commission's policies and practice.

16 (f) The commission may rely on its standard practice for review  
17 and approval of investor-owned utility conservation targets.

18 (2)(a) Except as provided in (~~(j)~~) (m) of this subsection, each  
19 qualifying utility shall use eligible renewable resources or acquire  
20 equivalent renewable energy credits, or any combination of them, to  
21 meet the following annual targets:

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

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

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

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

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

36 (d) A qualifying utility shall be considered in compliance with  
37 an annual target in (a) of this subsection if: (i) The utility's  
38 weather-adjusted load for the previous three years on average did not  
39 increase over that time period; (ii) after December 7, 2006, the  
40 utility did not commence or renew ownership or incremental purchases

1 of electricity from resources other than coal transition power or  
2 renewable resources other than on a daily spot price basis and the  
3 electricity is not offset by equivalent renewable energy credits; and  
4 (iii) the utility invested at least one percent of its total annual  
5 retail revenue requirement that year on eligible renewable resources,  
6 renewable energy credits, or a combination of both.

7 (e) A qualifying utility is considered in compliance with an  
8 annual target in (a) of this subsection if, for any year of the first  
9 two years of a biennial plan or update adopted by the utility  
10 pursuant to RCW 19.280.030:

11 (i) Either:

12 (A) The load to be served by the utility is not projected to  
13 increase from the previous year, net of conservation; or

14 (B) The cumulative load growth from December 7, 2006, including  
15 the projected load growth for the target year, net of conservation,  
16 is projected to be less than the amount of eligible renewable  
17 resources that would otherwise be required to meet the annual target  
18 in (a) of this subsection for that year, and that cumulative load  
19 growth is served by eligible renewable resources or RECs; or

20 (C) The utility has projected sufficient resources, owned or  
21 under contract as of January 1, 2010, to serve its projected load,  
22 net of conservation, for the target year; and

23 (ii) The utility did not otherwise commence or renew ownership or  
24 incremental purchases of electricity from resources other than coal  
25 transition power or renewable resources other than on a daily spot  
26 price basis, and the electricity is not offset by equivalent  
27 renewable energy credits;

28 (iii) The utility has invested at least one percent of its total  
29 annual retail revenue requirement that year on one or more of the  
30 following clean energy investments in any combination: Eligible  
31 renewable resources; renewable energy credits; noncost-effective  
32 conservation; demand response programs; electric vehicle charging  
33 stations; energy storage; research and development for clean energy  
34 technologies; or other projects as approved by the commission or  
35 governing board, as appropriate, that reduce or offset, or lead to  
36 development of technology that reduces or offsets, emissions of  
37 greenhouse gases; and

38 (iv) A utility must document compliance with this option by June  
39 30th after the completion of the target year for which it is to be  
40 utilized, or, if unable to document compliance by that date, must

1 document compliance with either (a) or (d) of this subsection or RCW  
2 19.285.050 by December 31st of that same year.

3 (f) The governing board of the consumer-owned utility utilizing  
4 planning projections for compliance under (e) of this subsection has  
5 sole authority to determine the process, timelines, and documentation  
6 for developing planning projections pursuant to chapter 19.280 RCW  
7 utilized for this compliance option.

8 (g) A utility utilizing the compliance path of either (d) or (e)  
9 of this subsection shall resume meeting the compliance requirements  
10 in this section on a time frame comparable in length to what it would  
11 have been before utilizing the compliance option.

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

16 ~~((f))~~ (i) In complying with the targets established in (a) of  
17 this subsection, a qualifying utility may not count:

18 (i) Eligible renewable resources or distributed generation where  
19 the associated renewable energy credits are owned by a separate  
20 entity; or

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

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

30 ~~((h))~~ (k)(i) A qualifying utility that acquires an eligible  
31 renewable resource or renewable energy credit may count that  
32 acquisition at one and two-tenths times its base value:

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

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

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

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

10       ~~((j))~~ (m)(i) Beginning January 1, 2016, only a qualifying  
11 utility that owns or is directly interconnected to a qualified  
12 biomass energy facility may use qualified biomass energy to meet its  
13 compliance obligation under this subsection.

14       (ii) A qualifying utility may no longer use electricity and  
15 associated renewable energy credits from a qualified biomass energy  
16 facility if the associated industrial pulping or wood manufacturing  
17 facility ceases operation other than for purposes of maintenance or  
18 upgrade.

19       ~~((k))~~ (n) An industrial facility that hosts a qualified biomass  
20 energy facility may only transfer or sell renewable energy credits  
21 associated with its facility to the qualifying utility with which it  
22 is directly interconnected with facilities owned by such a qualifying  
23 utility and that are capable of carrying electricity at transmission  
24 voltage. The qualifying utility may only use an amount of renewable  
25 energy credits associated with qualified biomass energy that are  
26 equivalent to the proportionate amount of its annual targets under  
27 (a)(ii) and (iii) of this subsection that was created by the load of  
28 the industrial facility. A qualifying utility that owns a qualified  
29 biomass energy facility may not transfer or sell renewable energy  
30 credits associated with qualified biomass energy to another person,  
31 entity, or qualifying utility.

32       (3) Utilities that become qualifying utilities after December 31,  
33 2006, shall meet the requirements in this section on a time frame  
34 comparable in length to that provided for qualifying utilities as of  
35 December 7, 2006.

36       **Sec. 2.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read  
37 as follows:

1 (1) The commission may adopt rules to ensure the proper  
2 implementation and enforcement of this chapter as it applies to  
3 investor-owned utilities.

4 (2) Except as provided in RCW 19.285.040(2)(f), the department  
5 shall adopt rules concerning only process, timelines, and  
6 documentation to ensure the proper implementation of this chapter as  
7 it applies to qualifying utilities that are not investor-owned  
8 utilities. Those rules include, but are not limited to, rules  
9 associated with a qualifying utility's development of conservation  
10 targets under RCW 19.285.040(1); a qualifying utility's decision to  
11 pursue alternative compliance in RCW 19.285.040(2) (d) or ~~((+i+))~~ (l)  
12 or 19.285.050(1); and the format and content of reports required in  
13 RCW 19.285.070. The department may not adopt rules concerning RCW  
14 19.285.040(2)(f). Nothing in this subsection may be construed to  
15 restrict the rate-making authority of the commission or a qualifying  
16 utility as otherwise provided by law.

17 (3) The commission and department may coordinate in developing  
18 rules related to process, timelines, and documentation that are  
19 necessary for implementation of this chapter.

20 (4) Pursuant to the administrative procedure act, chapter 34.05  
21 RCW, rules needed for the implementation of this chapter must be  
22 adopted by December 31, 2007. These rules may be revised as needed to  
23 carry out the intent and purposes of this chapter.

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