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**SUBSTITUTE SENATE BILL 5648**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Brown, Hatfield, Rivers, Hobbs, Sheldon, Smith, Honeyford, Schoesler, and Hewitt)

READ FIRST TIME 02/21/13.

1        AN ACT Relating to making energy conservation a top priority by  
2 adding new incentives and aligning the timing of the acquisitions of  
3 eligible renewable resources, electricity, or equivalent renewable  
4 energy credits, with the need for additional electric generating  
5 resources to serve consumers' loads, without changing the eligible  
6 renewable targets; amending RCW 19.285.040; 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 conservation  
9 helps all consumers including seniors, low-income residents, small  
10 business owners, day cares, schools, libraries, farms, and factories.  
11 The legislature further finds that prioritizing energy conservation is  
12 the premiere method to meet future state energy needs -- reducing  
13 energy demand and costs for everyone. Conservation as the number one  
14 priority will also ensure that ratepayer dollars are spent locally  
15 creating green jobs in every community in Washington state. To achieve  
16 this goal, the legislature further finds that citizens must be  
17 protected from requirements imposed on utilities that discourage  
18 conservation.

1 (2) It is the intent of the legislature to encourage the  
2 acquisition of energy conservation and eligible renewable resources by  
3 allowing utilities greater flexibility to meet conservation and  
4 eligible renewable targets and consumers' energy needs in the most  
5 prudent and cost-effective manner.

6 (3) The legislature finds that most utilities have already  
7 achieved, or are well on their way to achieving, eligible renewable  
8 resource acquisition targets as part of their requirements to serve  
9 consumers with additional clean, renewable energy.

10 (4) The legislature finds that, according to the Pacific Northwest  
11 electric power and conservation planning council, current renewable  
12 portfolio standard targets and financial incentives tend to encourage  
13 RPS-qualifying energy production that exceeds load growth, and further  
14 that developing resources to serve Northwest state RPS tends to  
15 increase the frequency of excess energy events, until the final RPS  
16 targets are met in the mid-2020s, when the frequency of excess energy  
17 events is expected to slowly decline.

18 (5) The legislature further finds that as energy production exceeds  
19 load growth, many utilities will comply with renewable energy targets  
20 using renewable energy credits that are unbundled from the electricity  
21 that they do not need to serve load; they will be competing with  
22 utilities in other states whose RPS targets are also increasing faster  
23 than load growth; and that according to the council, unbundling of  
24 renewable energy credits raises issues of concern to resource-rich  
25 areas such as the Northwest. The demand for, and cost of, balancing  
26 reserves in the supply region will increase, and the cost of acquiring  
27 RPS-qualifying and other low-carbon resources may rise for Northwest  
28 utilities because of increased competition from other state's RPS. The  
29 council states: "The potential extent of the future unbundled REC  
30 market should be assessed, the resulting benefits and costs  
31 characterized and actions needed to remedy significant impacts  
32 identified."

33 (6) It is the intent of the legislature to remove unintended  
34 economic hardship on electric consumers and reinforce the policy  
35 intentions of 2006's Initiative Measure No. 937, including stabilizing  
36 electric prices, increasing conservation, and creating high quality  
37 local jobs, and avoiding and mitigating potential future market

1 distortions and excess energy events due to RPS targets that are  
2 increasing faster than load growth.

3 **Sec. 2.** RCW 19.285.040 and 2012 c 22 s 3 are each amended to read  
4 as follows:

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

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

14 (b) Beginning January 2010, each qualifying utility shall establish  
15 and make publicly available a biennial acquisition target for cost-  
16 effective conservation consistent with its identification of achievable  
17 opportunities in (a) of this subsection, and meet that target during  
18 the subsequent two-year period. At a minimum, each biennial target  
19 must be no lower than the qualifying utility's pro rata share for that  
20 two-year period of its cost-effective conservation potential for the  
21 subsequent ten-year period.

22 (c) In meeting its conservation targets, a qualifying utility may  
23 count high-efficiency cogeneration owned and used by a retail electric  
24 customer to meet its own needs. High-efficiency cogeneration is the  
25 sequential production of electricity and useful thermal energy from a  
26 common fuel source, where, under normal operating conditions, the  
27 facility has a useful thermal energy output of no less than thirty-  
28 three percent of the total energy output. The reduction in load due to  
29 high-efficiency cogeneration shall be: (i) Calculated as the ratio of  
30 the fuel chargeable to power heat rate of the cogeneration facility  
31 compared to the heat rate on a new and clean basis of a  
32 best-commercially available technology combined-cycle natural gas-fired  
33 combustion turbine; and (ii) counted towards meeting the biennial  
34 conservation target in the same manner as other conservation savings.

35 (d) A qualifying utility may choose to count conservation acquired  
36 in excess of the biennial target in (b) of this subsection directly  
37 toward a subsequent biennial conservation target or as an equivalent

1 renewable energy credit to meet a current or future renewable target  
2 under subsection (2)(a) of this section. Any such conservation may be  
3 used only once to meet a target under (b) of this subsection or  
4 subsection (2)(a) of this section. The quantity of any excess  
5 conservation so counted may not reduce or otherwise impact the  
6 calculation of total achievable cost-effective conservation potential  
7 in the update of the conservation potential assessment used to  
8 establish such a subsequent biennial target.

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

12 ((+e)) (f) The commission may rely on its standard practice for  
13 review and approval of investor-owned utility conservation targets.

14 (2)(a) Except as provided in ((+j)) (k) of this subsection, each  
15 qualifying utility shall use eligible renewable resources or acquire  
16 equivalent renewable energy credits, or any combination of them, to  
17 meet the following annual targets:

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

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

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

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

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

32 (d) A qualifying utility shall be considered in compliance with an  
33 annual target in (a) of this subsection if: (i) The utility's weather-  
34 adjusted load for the previous three years on average did not increase  
35 over that time period; (ii) after December 7, 2006, the utility did not  
36 commence or renew ownership or incremental purchases of electricity  
37 from resources other than renewable resources other than on a daily  
38 spot price basis and the electricity is not offset by equivalent

1 renewable energy credits; and (iii) the utility invested at least one  
2 percent of its total annual retail revenue requirement that year on  
3 eligible renewable resources, renewable energy credits, or a  
4 combination of both.

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

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

11 (i) Eligible renewable resources or distributed generation where  
12 the associated renewable energy credits are owned by a separate entity;  
13 or

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

17 (g) Where fossil and combustible renewable resources are cofired in  
18 one generating unit located in the Pacific Northwest where the cofiring  
19 commenced after March 31, 1999, the unit shall be considered to produce  
20 eligible renewable resources in direct proportion to the percentage of  
21 the total heat value represented by the heat value of the renewable  
22 resources.

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

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

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

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

33 (i)(i) A qualifying utility shall be considered in compliance with  
34 an annual target in (a) of this subsection if, as of January 1st of the  
35 target year, the electricity from the qualifying utility's: (A)  
36 Electric generating resources, other than eligible renewable resources,  
37 either owned or under contract by January 1, 2010, and available to  
38 serve the utility's load during the target year; and (B) eligible

1 renewable resources either owned or under contract for the target year  
2 and available to serve the utility's load during the target year (or  
3 equivalent renewable energy credits), meets or exceeds the utility's  
4 load as described in (c) of this subsection.

5 (ii) Nothing in this subsection (2)(i) limits or interferes with a  
6 qualifying utility's authority to sell or otherwise dispose of any  
7 excess of electricity or credits as determined in (i)(i) of this  
8 subsection, whether the excess of electricity or credits is greater or  
9 less than the annual target.

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

18 ~~((+j))~~ (k)(i) Beginning January 1, 2016, only a qualifying utility  
19 that owns or is directly interconnected to a qualified biomass energy  
20 facility may use qualified biomass energy to meet its compliance  
21 obligation under ~~((RCW 19.285.040))~~ this subsection (2).

22 (ii) A qualifying utility may no longer use electricity and  
23 associated renewable energy credits from a qualified biomass energy  
24 facility if the associated industrial pulping or wood manufacturing  
25 facility ceases operation other than for purposes of maintenance or  
26 upgrade.

27 ~~((+k))~~ (l) An industrial facility that hosts a qualified biomass  
28 energy facility may only transfer or sell renewable energy credits  
29 associated with its facility to the qualifying utility with which it is  
30 directly interconnected with facilities owned by such a qualifying  
31 utility and that are capable of carrying electricity at transmission  
32 voltage. The qualifying utility may only use an amount of renewable  
33 energy credits associated with qualified biomass energy that are  
34 equivalent to the proportionate amount of its annual targets under  
35 (a)(ii) and (iii) of this subsection that was created by the load of  
36 the industrial facility. A qualifying utility that owns a qualified  
37 biomass energy facility may not transfer or sell renewable energy

1 credits associated with qualified biomass energy to another person,  
2 entity, or qualifying utility.

3 (3) Utilities that become qualifying utilities after December 31,  
4 2006, shall meet the requirements in this section on a time frame  
5 comparable in length to that provided for qualifying utilities as of  
6 December 7, 2006.

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