

# SENATE BILL REPORT

## ESSB 5840

---

---

As Amended by House, April 17, 2009

**Title:** An act relating to the energy independence act.

**Brief Description:** Modifying the energy independence act.

**Sponsors:** Senate Committee on Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Holmquist, Hatfield, Parlette, Ranker, Morton, Sheldon, Jarrett, Delvin and Hewitt).

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/04/09, 2/20/09 [DPS, DNP].

Passed Senate: 3/10/09, 27-21.

Passed House: 4/17/09, 57-40.

---

### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 5840 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Hatfield, Marr, Ranker and Sheldon.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Holmquist and Morton.

**Staff:** William Bridges (786-7416)

**Background:** Approved by voters in 2006, the Energy Independence Act, also known as Initiative 937, requires electric utilities with 25,000 or more customers to meet targets for energy conservation and for using eligible renewable resources.

Energy Conservation Assessments and Targets. Each qualifying electric utility must pursue all available conservation that is cost-effective, reliable, and feasible. By January 1, 2010, each qualifying utility must assess the conservation it can achieve through 2019, and update the assessments every two years for the next ten-year period. Beginning January 2010, each qualifying utility must meet biennial conservation targets that are consistent with its conservation assessments.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Eligible Renewable Resource Targets. Each qualifying utility must use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

- at least 3 percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
- at least 9 percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
- at least 15 percent of its load by January 1, 2020, and each year thereafter.

Eligible Renewable Resource. "Eligible renewable resource" includes wind; solar; geothermal energy; landfill and sewage gas; wave and tidal power; and certain biomass and biodiesel fuels. Electricity produced from an eligible renewable resource must be generated in a facility that started operating after March 31, 1999. The facility must either be located in the Pacific Northwest or the electricity from the facility must be delivered into the state on a real-time basis. Incremental electricity produced from efficiency improvements at hydropower facilities owned by qualifying utilities is also an eligible renewable resource, if the improvements were completed after March 31, 1999.

Renewable Energy Credit (REC). A REC is a tradable certificate of proof of at least one megawatt hour of an eligible renewable resource where the generation facility is not powered by fresh water. Under Initiative 937, a REC represents all the "nonpower attributes associated" with the power. RECs can be bought and sold in the marketplace, and they may be used during the year they are acquired, the previous year, or the subsequent year.

Carbon Credits. In addition to RECs, reductions in greenhouse gas emissions can be traded in the marketplace. When doing so, greenhouse gases are traded according to their "carbon dioxide equivalent," which is a measure of a gas's global warming potential compared to carbon dioxide. Carbon benefits that come from displacing other potential fossil fuel resources through electricity generation are included in a REC; however, carbon credits related to the removal of methane from the atmosphere can be sold separately from a REC.

Western Renewable Energy Generation Information System (WREGIS). WREGIS is a database designed to track all renewable energy generation in the geographic area covered by the Western Interconnection. It is a voluntary, fee-supported system developed by the Western Governors' Association, the Western Regional Air Partnership, and the California Energy Commission.

Initiative 937 required the Department of Community, Trade, and Economic Development (CTED) to select a tracking system to verify RECs. CTED selected WREGIS.

Western Electricity Coordinating Council (WECC). WECC is a regional electric reliability council that coordinates and ensures the reliability of the Western Interconnection Bulk Power System. Its membership includes transmission operators, utilities, utility customers, and state and provincial regulators. The WECC territory covers the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 western states.

Pacific Northwest Electric Power and Conservation Planning Council (Council). The council was established in the federal Northwest Power Act of 1980. The governors of Washington, Oregon, Idaho, and Montana each appoint two members to the Council. Among its duties, the Council must develop a power plan at least every five years to meet the regions' electricity needs. Initiative 937 requires qualifying utilities to use methodologies consistent with the Council's most recent power plan when calculating their achievable cost-effective conservation potential. The Council is expected to release its sixth power plan in August 2009.

**Summary of Engrossed Substitute Bill:** Declaring the Policy of the State. It is declared that the policy of the state is to recognize and promote the use of low-cost renewable hydroelectric generation to firm, shape, and integrate other renewable energy resources into the northwestern electric grid for delivery to Washington residents.

Expanding the Geographic Boundaries for Eligible Renewable Resources and RECs. The geographic limitation for an eligible renewable resource, other than fresh water, is expanded from the Pacific Northwest to the WECC. The same expansion applies to RECs.

Expanding the Definition of Eligible Renewable Resource. The definition of "eligible renewable resource" is expanded to include the following: (1) all incremental hydroelectric generation from efficiency improvements completed after March 31, 1999, to facilities in the Pacific Northwest; (2) electricity generation in water supply pipes located in the Pacific Northwest; (3) existing hydroelectric generation projects with a rated capacity of 30 megawatts or less located in Washington and owned by a qualifying utility or joint operating agency; and (4) 25 percent of biomass-generated electricity from a facility located in Washington that started operations before March 31, 1999.

Creating a REC Exception for Anaerobic Digesters. Anaerobic digesters are allowed to separate their nonpower attributes into RECs and carbon credits.

Expanding the Definition of Biomass Energy. The following are added to the definition of "biomass energy:" (1) by-products of pulping or wood manufacturing processes located in Washington that are not derived from old growth forests, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (2) wooden demolition or construction debris; (3) black liquors derived from algae and other sources; and (4) biomass energy based on a food waste, yard waste, and biosolids. In addition, the prohibition against using biodiesel fuel derived from crops on land cleared from "first growth forests" is removed.

Increasing the Eligible Renewable Acquisition Targets and Allowing the Limited Use of Conservation to Meet Those Targets. Each qualifying utility may use a combination of eligible renewable resources, RECs, and up to 25 percent of its excess conservation to meet the following targets:

- at least 3 percent of a qualifying utility's load by January 1, 2012, and each year thereafter through December 31, 2013;
- at least 4 percent of a qualifying utility's load by January 1, 2014, and each year thereafter through December 31, 2015;

- at least 10 percent of a qualifying utility's load by January 1, 2016, and each year thereafter through December 31, 2019;
- at least 16 percent of a qualifying utility's load by January 1, 2020, and each year thereafter through December 31, 2024; and
- at least 20 percent of a qualifying utility's load by January 1, 2025, and each year thereafter.

Incremental improvements to hydroelectric generation projects may only be counted once, either under the conservation target or the eligible renewable resource acquisition target.

Providing for a Load-Growth Exception. A qualifying utility meeting a specified load-growth test is only required to meet 100 percent of its increased annual load with eligible renewable resources or renewable energy credits.

Clarifying the Use of RECs. Qualifying utilities may use RECs to meet a renewable resources acquisition target if the REC is purchased or contracted to be purchased in the year preceding the target year, throughout the target year, or in advance of the target year.

Clarifying the Definition of Cogeneration. In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer, if the cogeneration facility is designed to have a projected overall thermal conversion efficiency of at least 70 percent.

Limiting the Use of Purchased Incremental Hydroelectric Power From the Bonneville Power Administration. A qualifying utility is prohibited from counting any incremental hydroelectric power it purchases from another utility towards its eligible renewable acquisition target if the incremental power was marketed by the Bonneville Power Administration.

Creating a Solar Incentive. A qualifying utility that acquires solar energy may count that acquisition at six times its base value if the energy is produced using solar inverters and modules manufactured in Washington.

Changing Reporting Requirements for Meeting the Eligible Renewable Acquisition Targets. A qualifying utility that is an investor-owned utility must submit compliance reports to the Washington Utilities and Transportation Commission (WUTC) by June 1, 2014, and annually thereafter. All other qualifying utilities must submit their determinations of compliance to the State Auditor by June 1, 2014, and annually thereafter. A qualifying utility electing to demonstrate an alternative compliance with a target must include in its annual report relevant data to demonstrate its compliance.

Creating Additional Rulemaking Provisions. Rules implementing Initiative 937 must be adopted by June 30, 2010. Within six months of the adoption of the Council's power plan, CTED and the WUTC must start a rulemaking process. In the process, CTED and the WUTC must consider adopting any changes in Council methodologies that would affect a qualifying utility's conservation potential. Any adopted rules must be applied to the next biennial target that begins at least six months after the adoption date of the rules.

Requiring Reports. By December 1, 2009, CTED must report to the Legislature recommendations on how the state may recognize and promote the use of hydroelectric power to integrate other renewable energy resources. By December 1, 2010, the Joint Legislative Audit and Review Committee must evaluate the Feed-In Tariff Program contemplated in Substitute House Bill 1086 (2009).

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Washington has the most strenuous renewable portfolio standard in the west, and this bill makes Washington's standards more consistent with the other western states by adding provisions relating to small hydropower, biomass, and the WECC. The bill should be changed to clarify the use of "facilities" and "projects," allow additional conservation efforts, expand the geographic boundaries for biomass fuel, and increase the solar incentive to a multiplier of six. The bill properly recognizes conservation as the least expensive resource. The load-growth provisions in the bill are timely and absolutely critical given the current economic recession. The bill should recognize hydropower that supports the integration of wind. While the bill supports flexibility and will help keep people employed, concerns have been expressed about the raised targets. Pulping liquors are renewable and the bill properly recognizes it as such. The three-year compliance period should be more flexible.

OTHER: I-937 plays an important role in helping the state meet its greenhouse gas targets and in supporting the new green economy. The Initiative also promotes energy security, price stability, power reliability, and environmental sustainability. Hydropower is recognized in the Initiative as a "renewable resource" and the state needs to build other renewable resources on the hydropower foundation. If the Initiative is amended by allowing more resources to qualify, then they must be balanced with raised targets. Most utilities will already meet their 2012 targets so why do we need to amend the Initiative? This bill threatens Washington's leadership on climate change issues. The Initiative already contains provisions to protect slow-growing utilities. All hydropower projects adversely affect the natural environment and new facilities should not be contemplated. Why would the state contemplate new small hydropower projects when it is also trying to preserve streams from environmental degradation? I-937 can't be all things to all people.

**Persons Testifying:** PRO: Vicki Austin, Dave Warren, Washington PUD Association; Tim Boyd, Industrial Customers of NW Utilities; Kathleen Collins, PacifiCorp; Ken Johnson, PSE; Kent Lopez, Washington Rural Electric Cooperatives; Llewellyn Mathews, NW Pulp & Paper Association; Chris McCabe, AWB; Andrew Munro, Grant PUD; Noah Reandeau, NW Energy Efficiency Council; Collins Sprague, Avista; Tracy Yount, Chelan PUD.

OTHER: Rich Bowers, Hydro Reform Coalition; Carrie Dolwick, NWEA; Craig Engelking, Sierra Club; Miguel Perez-Gibson, Climate Solutions; Nancy Hirsh, NW Energy Coalition;

Thomas O'Keefe, American Whitewater; Toni Potter, League of Women Voters; Rachel Shimshak, Renewable NW Project; Clifford Traisman, Washington Conservation Voters, Washington Environmental Council; Tony Usibelli, CTED, Governor's Office.

**House Amendment(s):** Policy Declaration. Removes the policy declaration promoting hydropower to integrate other renewable power.

Definitions. Makes the following changes to the definition of "eligible renewable power": (1) replaces the provision for small hydropower under 30 MW with "electricity from an existing generation facility powered by a fresh water renewable resource that commenced operation before March 31, 1999"; (2) adds electricity from a hydroelectric generating facility with an installed generating capacity of 5 MW or less under specified conditions; and (3) narrows the grandfathering of eligible biomass energy to 100 percent of electricity generated in facilities owned by qualifying utilities and 25 percent of electricity generated in other facilities if delivered to qualifying utilities.

Distributed Generation. Increases the multiplier for distributed generation from two to seven.

Load-Growth Exception. Limits the exception for slow-growing utilities to qualifying utilities with two million MW hours or less in annual sales.

Conservation. Removes the provision allowing conservation to count as an eligible renewable resource.

Eligible Renewable Energy Targets. Increases the 2016 target from 9 to 10.25 percent and the 2020 target from 15 percent to 16.25 percent. Creates a goal of 20 percent by 2025.

Solar Incentives. Allows a qualifying utility to count solar energy located in the state at four times its base value or six times its base value if using made-in Washington equipment. Does not allow solar multipliers to be used with the multiplier for distributed generation.

Renewable Energy Credits. Allows a qualifying utility to use a renewable energy credit during the target year, preceding 2 years, or subsequent year.

Studies. Adds "within existing resources" to the CTED study on using hydropower to integrate other renewable power. Adds a CTED study of impacts of electricity costs on low-income families in one county in Western Washington and one county in Eastern Washington.