

INITIATIVE 937

To the People

Chapter 1, Laws of 2007

ENERGY INDEPENDENCE ACT

EFFECTIVE DATE: 12/07/06

Approved by the
People of the State of Washington
in the General Election on
November 7, 2006

ORIGINALLY FILED

February 15, 2006

Secretary of State

1 AN ACT Relating to requirements for new energy resources; adding a
2 new chapter to Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** INTENT. This chapter concerns requirements
5 for new energy resources. This chapter requires large utilities to
6 obtain fifteen percent of their electricity from new renewable
7 resources such as solar and wind by 2020 and undertake cost-effective
8 energy conservation.

9 NEW SECTION. **Sec. 2.** DECLARATION OF POLICY. Increasing energy
10 conservation and the use of appropriately sited renewable energy
11 facilities builds on the strong foundation of low-cost renewable
12 hydroelectric generation in Washington state and will promote energy
13 independence in the state and the Pacific Northwest region. Making the
14 most of our plentiful local resources will stabilize electricity prices
15 for Washington residents, provide economic benefits for Washington
16 counties and farmers, create high-quality jobs in Washington, provide
17 opportunities for training apprentice workers in the renewable energy

1 field, protect clean air and water, and position Washington state as a
2 national leader in clean energy technologies.

3 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Attorney general" means the Washington state office of the
7 attorney general.

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

13 (3) "Commission" means the Washington state utilities and
14 transportation commission.

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

18 (5) "Cost-effective" has the same meaning as defined in RCW
19 80.52.030.

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

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

24 (8) "Department" means the department of community, trade, and
25 economic development or its successor.

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

29 (10) "Eligible renewable resource" means:

30 (a) Electricity from a generation facility powered by a renewable
31 resource other than fresh water that commences operation after March
32 31, 1999, where: (i) The facility is located in the Pacific Northwest;
33 or (ii) the electricity from the facility is delivered into Washington
34 state on a real-time basis without shaping, storage, or integration
35 services; or

36 (b) Incremental electricity produced as a result of efficiency
37 improvements completed after March 31, 1999, to hydroelectric
38 generation projects owned by a qualifying utility and located in the

1 Pacific Northwest or to hydroelectric generation in irrigation pipes
2 and canals located in the Pacific Northwest, where the additional
3 generation in either case does not result in new water diversions or
4 impoundments.

5 (11) "Investor owned utility" has the same meaning as defined in
6 RCW 19.29A.010.

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

10 (13) "Nonpower attributes" means all environmentally related
11 characteristics, exclusive of energy, capacity reliability, and other
12 electrical power service attributes, that are associated with the
13 generation of electricity from a renewable resource, including but not
14 limited to the facility's fuel type, geographic location, vintage,
15 qualification as an eligible renewable resource, and avoided emissions
16 of pollutants to the air, soil, or water, and avoided emissions of
17 carbon dioxide and other greenhouse gases.

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

22 (15) "Public facility" has the same meaning as defined in RCW
23 39.35C.010.

24 (16) "Qualifying utility" means an electric utility, as the term
25 "electric utility" is defined in RCW 19.29A.010, that serves more than
26 twenty-five thousand customers in the state of Washington. The number
27 of customers served may be based on data reported by a utility in form
28 861, "annual electric utility report," filed with the energy
29 information administration, United States department of energy.

30 (17) "Renewable energy credit" means a tradable certificate of
31 proof of at least one megawatt-hour of an eligible renewable resource
32 where the generation facility is not powered by fresh water, the
33 certificate includes all of the nonpower attributes associated with
34 that one megawatt-hour of electricity, and the certificate is verified
35 by a renewable energy credit tracking system selected by the
36 department.

37 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar
38 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
39 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel

1 fuel as defined in RCW 82.29A.135 that is not derived from crops raised
2 on land cleared from old growth or first-growth forests where the
3 clearing occurred after the effective date of this section; and (i)
4 biomass energy based on animal waste or solid organic fuels from wood,
5 forest, or field residues, or dedicated energy crops that do not
6 include (i) wood pieces that have been treated with chemical
7 preservatives such as creosote, pentachlorophenol, or copper-chrome-
8 arsenic; (ii) black liquor byproduct from paper production; (iii) wood
9 from old growth forests; or (iv) municipal solid waste.

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

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

15 NEW SECTION. **Sec. 4.** ENERGY CONSERVATION AND RENEWABLE ENERGY
16 TARGETS. (1) Each qualifying utility shall pursue all available
17 conservation that is cost-effective, reliable, and feasible.

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

25 (b) Beginning January 2010, each qualifying utility shall establish
26 and make publicly available a biennial acquisition target for cost-
27 effective conservation consistent with its identification of achievable
28 opportunities in (a) of this subsection, and meet that target during
29 the subsequent two-year period. At a minimum, each biennial target
30 must be no lower than the qualifying utility's pro rata share for that
31 two-year period of its cost-effective conservation potential for the
32 subsequent ten-year period.

33 (c) In meeting its conservation targets, a qualifying utility may
34 count high-efficiency cogeneration owned and used by a retail electric
35 customer to meet its own needs. High-efficiency cogeneration is the
36 sequential production of electricity and useful thermal energy from a
37 common fuel source, where, under normal operating conditions, the
38 facility has a useful thermal energy output of no less than thirty-

1 three percent of the total energy output. The reduction in load due to
2 high-efficiency cogeneration shall be: (i) Calculated as the ratio of
3 the fuel chargeable to power heat rate of the cogeneration facility
4 compared to the heat rate on a new and clean basis of a
5 best-commercially available technology combined-cycle natural gas-fired
6 combustion turbine; and (ii) counted towards meeting the biennial
7 conservation target in the same manner as other conservation savings.

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

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

13 (2)(a) Each qualifying utility shall use eligible renewable
14 resources or acquire equivalent renewable energy credits, or a
15 combination of both, to meet the following annual targets:

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

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

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

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

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

30 (d) A qualifying utility shall be considered in compliance with an
31 annual target in (a) of this subsection if: (i) The utility's weather-
32 adjusted load for the previous three years on average did not increase
33 over that time period; (ii) after the effective date of this section,
34 the utility did not commence or renew ownership or incremental
35 purchases of electricity from resources other than renewable resources
36 other than on a daily spot price basis and the electricity is not
37 offset by equivalent renewable energy credits; and (iii) the utility
38 invested at least one percent of its total annual retail revenue

1 requirement that year on eligible renewable resources, renewable energy
2 credits, or a combination of both.

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

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

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

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

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

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

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

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

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

31 (i) A qualifying utility shall be considered in compliance with an
32 annual target in (a) of this subsection if events beyond the reasonable
33 control of the utility that could not have been reasonably anticipated
34 or ameliorated prevented it from meeting the renewable energy target.
35 Such events include weather-related damage, mechanical failure,
36 strikes, lockouts, and actions of a governmental authority that
37 adversely affect the generation, transmission, or distribution of an
38 eligible renewable resource under contract to a qualifying utility.

1 (3) Utilities that become qualifying utilities after December 31,
2 2006, shall meet the requirements in this section on a time frame
3 comparable in length to that provided for qualifying utilities as of
4 the effective date of this section.

5 NEW SECTION. Sec. 5. RESOURCE COSTS. (1)(a) A qualifying utility
6 shall be considered in compliance with an annual target created in
7 section 4(2) of this act for a given year if the utility invested four
8 percent of its total annual retail revenue requirement on the
9 incremental costs of eligible renewable resources, the cost of
10 renewable energy credits, or a combination of both, but a utility may
11 elect to invest more than this amount.

12 (b) The incremental cost of an eligible renewable resource is
13 calculated as the difference between the levelized delivered cost of
14 the eligible renewable resource, regardless of ownership, compared to
15 the levelized delivered cost of an equivalent amount of reasonably
16 available substitute resources that do not qualify as eligible
17 renewable resources, where the resources being compared have the same
18 contract length or facility life.

19 (2) An investor-owned utility is entitled to recover all prudently
20 incurred costs associated with compliance with this chapter. The
21 commission shall address cost recovery issues of qualifying utilities
22 that are investor-owned utilities that serve both in Washington and in
23 other states in complying with this chapter.

24 NEW SECTION. Sec. 6. ACCOUNTABILITY AND ENFORCEMENT. (1) Except
25 as provided in subsection (2) of this section, a qualifying utility
26 that fails to comply with the energy conservation or renewable energy
27 targets established in section 4 of this act shall pay an
28 administrative penalty to the state of Washington in the amount of
29 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,
30 this penalty shall be adjusted annually according to the rate of change
31 of the inflation indicator, gross domestic product-implicit price
32 deflator, as published by the bureau of economic analysis of the United
33 States department of commerce or its successor.

34 (2) A qualifying utility that does not meet an annual renewable
35 energy target established in section 4(2) of this act is exempt from
36 the administrative penalty in subsection (1) of this section for that
37 year if the commission for investor-owned utilities or the auditor for

1 all other qualifying utilities determines that the utility complied
2 with section 4(2) (d) or (i) or 5(1) of this act.

3 (3) A qualifying utility must notify its retail electric customers
4 in published form within three months of incurring a penalty regarding
5 the size of the penalty and the reason it was incurred.

6 (4) The commission shall determine if an investor-owned utility may
7 recover the cost of this administrative penalty in electric rates, and
8 may consider providing positive incentives for an investor-owned
9 utility to exceed the targets established in section 4 of this act.

10 (5) Administrative penalties collected under this chapter shall be
11 deposited into the energy independence act special account which is
12 hereby created. All receipts from administrative penalties collected
13 under this chapter must be deposited into the account. Expenditures
14 from the account may be used only for the purchase of renewable energy
15 credits or for energy conservation projects at public facilities, local
16 government facilities, community colleges, or state universities. The
17 state shall own and retire any renewable energy credits purchased using
18 moneys from the account. Only the director of general administration
19 or the director's designee may authorize expenditures from the account.
20 The account is subject to allotment procedures under chapter 43.88 RCW,
21 but an appropriation is not required for expenditures.

22 (6) For a qualifying utility that is an investor-owned utility, the
23 commission shall determine compliance with the provisions of this
24 chapter and assess penalties for noncompliance as provided in
25 subsection (1) of this section.

26 (7) For qualifying utilities that are not investor-owned utilities,
27 the auditor is responsible for auditing compliance with this chapter
28 and rules adopted under this chapter that apply to those utilities and
29 the attorney general is responsible for enforcing that compliance.

30 NEW SECTION. **Sec. 7.** REPORTING AND PUBLIC DISCLOSURE. (1) On or
31 before June 1, 2012, and annually thereafter, each qualifying utility
32 shall report to the department on its progress in the preceding year in
33 meeting the targets established in section 4 of this act, including
34 expected electricity savings from the biennial conservation target,
35 expenditures on conservation, actual electricity savings results, the
36 utility's annual load for the prior two years, the amount of
37 megawatt-hours needed to meet the annual renewable energy target, the
38 amount of megawatt-hours of each type of eligible renewable resource

1 acquired, the type and amount of renewable energy credits acquired, and
2 the percent of its total annual retail revenue requirement invested in
3 the incremental cost of eligible renewable resources and the cost of
4 renewable energy credits. For each year that a qualifying utility
5 elects to demonstrate alternative compliance under section 4(2) (d) or
6 (i) or 5(1) of this act, it must include in its annual report relevant
7 data to demonstrate that it met the criteria in that section. A
8 qualifying utility may submit its report to the department in
9 conjunction with its annual obligations in chapter 19.29A RCW.

10 (2) A qualifying utility that is an investor-owned utility shall
11 also report all information required in subsection (1) of this section
12 to the commission, and all other qualifying utilities shall also make
13 all information required in subsection (1) of this section available to
14 the auditor.

15 (3) A qualifying utility shall also make reports required in this
16 section available to its customers.

17 NEW SECTION. **Sec. 8.** RULE MAKING. (1) The commission may adopt
18 rules to ensure the proper implementation and enforcement of this
19 chapter as it applies to investor-owned utilities.

20 (2) The department shall adopt rules concerning only process,
21 timelines, and documentation to ensure the proper implementation of
22 this chapter as it applies to qualifying utilities that are not
23 investor-owned utilities. Those rules include, but are not limited to,
24 rules associated with a qualifying utility's development of
25 conservation targets under section 4(1) of this act; a qualifying
26 utility's decision to pursue alternative compliance in section 4(2) (d)
27 or (i) or 5(1) of this act; and the format and content of reports
28 required in section 7 of this act. Nothing in this subsection may be
29 construed to restrict the rate-making authority of the commission or a
30 qualifying utility as otherwise provided by law.

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

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

1 NEW SECTION. **Sec. 9.** CONSTRUCTION. The provisions of this
2 chapter are to be liberally construed to effectuate the intent,
3 policies, and purposes of this chapter.

4 NEW SECTION. **Sec. 10.** SEVERABILITY. If any provision of this act
5 or its application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 11.** SHORT TITLE. This chapter may be known and
9 cited as the energy independence act.

10 NEW SECTION. **Sec. 12.** CAPTIONS NOT LAW. Captions used in this
11 chapter are not any part of the law.

12 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
13 constitute a new chapter in Title 19 RCW.

 Originally filed in Office of Secretary of State February 15, 2006.
 Approved by the People of the State of Washington in the General
1 Election on November 7, 2006.