

SB 5128 - S AMD  
By Senator Takko

ADOPTED 03/01/2017

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 19.285.030 and 2014 c 45 s 1 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

14 (3)(a) "Biomass energy" includes: (i) Organic by-products of  
15 pulping and the wood manufacturing process; (ii) animal manure; (iii)  
16 solid organic fuels from wood; (iv) forest or field residues; (v)  
17 untreated wooden demolition or construction debris; (vi) food waste  
18 and food processing residuals; (vii) liquors derived from algae;  
19 (viii) dedicated energy crops; and (ix) yard waste.

20 (b) "Biomass energy" does not include: (i) Wood pieces that have  
21 been treated with chemical preservatives such as creosote,  
22 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old  
23 growth forests; or (iii) municipal solid waste.

24 (4) "Coal transition power" has the same meaning as defined in  
25 RCW 80.80.010.

26 (5) "Commission" means the Washington state utilities and  
27 transportation commission.

28 (6) "Conservation" means any reduction in electric power  
29 consumption resulting from increases in the efficiency of energy use,  
30 production, or distribution.

31 (7) "Cost-effective" has the same meaning as defined in RCW  
32 80.52.030.

1 (8) "Council" means the Washington state apprenticeship and  
2 training council within the department of labor and industries.

3 (9) "Customer" means a person or entity that purchases  
4 electricity for ultimate consumption and not for resale.

5 (10) "Department" means the department of commerce or its  
6 successor.

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

11 (12) "Eligible renewable resource" means:

12 (a) Electricity from a generation facility powered by a renewable  
13 resource other than freshwater that commences operation after March  
14 31, 1999, where: (i) The facility is located in the Pacific  
15 Northwest; or (ii) the electricity from the facility is delivered  
16 into Washington state on a real-time basis without shaping, storage,  
17 or integration services;

18 (b) Incremental electricity produced as a result of efficiency  
19 improvements completed after March 31, 1999, to hydroelectric  
20 generation projects owned by a qualifying utility and located in the  
21 Pacific Northwest where the additional generation does not result in  
22 new water diversions or impoundments;

23 (c) Hydroelectric generation from a project completed after March  
24 31, 1999, where the generation facility is located in irrigation  
25 pipes, irrigation canals, water pipes whose primary purpose is for  
26 conveyance of water for municipal use, and wastewater pipes located  
27 in Washington where the generation does not result in new water  
28 diversions or impoundments;

29 (d) Qualified biomass energy; ~~((e))~~

30 (e) For a qualifying utility that serves customers in other  
31 states, electricity from a generation facility powered by a renewable  
32 resource other than freshwater that commences operation after March  
33 31, 1999, where: (i) The facility is located within a state in which  
34 the qualifying utility serves retail electrical customers; and (ii)  
35 the qualifying utility owns the facility in whole or in part or has a  
36 long-term contract with the facility of at least twelve months or  
37 more; or

38 (f)(i) Incremental electricity produced as a result of a capital  
39 investment completed after January 1, 2010, that increases, relative  
40 to a baseline level of generation prior to the capital investment,

1 the amount of electricity generated in a facility that generates  
2 qualified biomass energy as defined under subsection (18)(c)(ii) of  
3 this section and that commenced operation before March 31, 1999.

4 (ii) Beginning January 1, 2007, the facility must demonstrate its  
5 baseline level of generation over a three-year period prior to the  
6 capital investment in order to calculate the amount of incremental  
7 electricity produced.

8 (iii) The facility must demonstrate that the incremental  
9 electricity resulted from the capital investment, which does not  
10 include expenditures on operation and maintenance in the normal  
11 course of business, through direct or calculated measurement.

12 (13) "Investor-owned utility" has the same meaning as defined in  
13 RCW 19.29A.010.

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

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

25 (b) "Nonpower attributes" does not include any aspects, claims,  
26 characteristics, and benefits associated with the on-site capture and  
27 destruction of methane or other greenhouse gases at a facility  
28 through a digester system, landfill gas collection system, or other  
29 mechanism, which may be separately marketable as greenhouse gas  
30 emission reduction credits, offsets, or similar tradable commodities.  
31 However, these separate avoided emissions may not result in or  
32 otherwise have the effect of attributing greenhouse gas emissions to  
33 the electricity.

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

38 (17) "Public facility" has the same meaning as defined in RCW  
39 39.35C.010.

1 (18) "Qualified biomass energy" means electricity produced from a  
2 biomass energy facility that: (a) Commenced operation before March  
3 31, 1999; (b) contributes to the qualifying utility's load; and (c)  
4 is owned either by: (i) A qualifying utility; or (ii) an industrial  
5 facility that is directly interconnected with electricity facilities  
6 that are owned by a qualifying utility and capable of carrying  
7 electricity at transmission voltage.

8 (19) "Qualifying utility" means an electric utility, as the term  
9 "electric utility" is defined in RCW 19.29A.010, that serves more  
10 than twenty-five thousand customers in the state of Washington. The  
11 number of customers served may be based on data reported by a utility  
12 in form 861, "annual electric utility report," filed with the energy  
13 information administration, United States department of energy.

14 (20) "Renewable energy credit" means a tradable certificate of  
15 proof of at least one megawatt-hour of an eligible renewable resource  
16 where the generation facility is not powered by freshwater. The  
17 certificate includes all of the nonpower attributes associated with  
18 that one megawatt-hour of electricity, and the certificate is  
19 verified by a renewable energy credit tracking system selected by the  
20 department.

21 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
22 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
23 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
24 fuel as defined in RCW 82.29A.135 that is not derived from crops  
25 raised on land cleared from old growth or first-growth forests where  
26 the clearing occurred after December 7, 2006; or (i) biomass energy.

27 (22) "Rule" means rules adopted by an agency or other entity of  
28 Washington state government to carry out the intent and purposes of  
29 this chapter.

30 (23) "Year" means the twelve-month period commencing January 1st  
31 and ending December 31st.

32 **Sec. 2.** RCW 19.285.040 and 2014 c 26 s 1 are each amended to  
33 read as follows:

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

36 (a) By January 1, 2010, using methodologies consistent with those  
37 used by the Pacific Northwest electric power and conservation  
38 planning council in the most recently published regional power plan  
39 as it existed on June 12, 2014, or a subsequent date as may be

1 provided by the department or the commission by rule, each qualifying  
2 utility shall identify its achievable cost-effective conservation  
3 potential through 2019. Nothing in the rule adopted under this  
4 subsection precludes a qualifying utility from using its utility  
5 specific conservation measures, values, and assumptions in  
6 identifying its achievable cost-effective conservation potential. At  
7 least every two years thereafter, the qualifying utility shall review  
8 and update this assessment for the subsequent ten-year period.

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

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

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

36 (iii) Beginning January 1, 2012, and until December 31, 2017, a  
37 qualifying utility with an industrial facility located in a county  
38 with a population between ninety-five thousand and one hundred  
39 fifteen thousand that is directly interconnected with electricity  
40 facilities that are capable of carrying electricity at transmission

1 voltage((τ)) may use cost-effective conservation from that industrial  
2 facility in excess of its biennial acquisition target to help meet  
3 the immediately subsequent two biennial acquisition targets, such  
4 that no more than twenty-five percent of any biennial target may be  
5 met with excess conservation savings allowed under all of the  
6 provisions of this section combined.

7 (d) In meeting its conservation targets, a qualifying utility may  
8 count high-efficiency cogeneration owned and used by a retail  
9 electric customer to meet its own needs. High-efficiency cogeneration  
10 is the sequential production of electricity and useful thermal energy  
11 from a common fuel source, where, under normal operating conditions,  
12 the facility has a useful thermal energy output of no less than  
13 thirty-three percent of the total energy output. The reduction in  
14 load due to high-efficiency cogeneration shall be: (i) Calculated as  
15 the ratio of the fuel chargeable to power heat rate of the  
16 cogeneration facility compared to the heat rate on a new and clean  
17 basis of a best-commercially available technology combined-cycle  
18 natural gas-fired combustion turbine; and (ii) counted towards  
19 meeting the biennial conservation target in the same manner as other  
20 conservation savings.

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

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

26 (2)(a) Except as provided in (j) of this subsection, each  
27 qualifying utility shall use eligible renewable resources or acquire  
28 equivalent renewable energy credits, or any combination of them, to  
29 meet the following annual targets:

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

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

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

36 (b) A qualifying utility may count distributed generation at  
37 double the facility's electrical output if the utility: (i) Owns or  
38 has contracted for the distributed generation and the associated  
39 renewable energy credits; or (ii) has contracted to purchase the  
40 associated renewable energy credits.

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

4 (d) A qualifying utility shall be considered in compliance with  
5 an annual target in (a) of this subsection if: (i) The utility's  
6 weather-adjusted load for the previous three years on average did not  
7 increase over that time period; (ii) after December 7, 2006, the  
8 utility did not commence or renew ownership or incremental purchases  
9 of electricity from resources other than coal transition power or  
10 renewable resources other than on a daily spot price basis and the  
11 electricity is not offset by equivalent renewable energy credits; and  
12 (iii) the utility invested at least one percent of its total annual  
13 retail revenue requirement that year on eligible renewable resources,  
14 renewable energy credits, or a combination of both.

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

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

21 (i) Eligible renewable resources or distributed generation where  
22 the associated renewable energy credits are owned by a separate  
23 entity; or

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

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

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

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

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

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

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

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

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

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

36 (3) Utilities that become qualifying utilities after December 31,  
37 2006, shall meet the requirements in this section on a time frame  
38 comparable in length to that provided for qualifying utilities as of  
39 December 7, 2006.



1       **Sec. 3.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read  
2 as follows:

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

6       (2) The department shall adopt rules concerning only process,  
7 timelines, and documentation to ensure the proper implementation of  
8 this chapter as it applies to qualifying utilities that are not  
9 investor-owned utilities. Those rules include, but are not limited  
10 to, rules associated with a qualifying utility's development of  
11 conservation targets under RCW 19.285.040(1); a qualifying utility's  
12 decision to pursue alternative compliance in RCW 19.285.040(2) (d) or  
13 (i) or 19.285.050(1); ~~((and))~~ the format and content of reports  
14 required in RCW 19.285.070; and the development of a methodology for  
15 calculating baseline levels of generation under RCW  
16 19.285.030(12)(f). Nothing in this subsection may be construed to  
17 restrict the rate-making authority of the commission or a qualifying  
18 utility as otherwise provided by law.

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

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

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**ADOPTED 03/01/2017**

26       On page 1, line 3 of the title, after "independence act;" strike  
27 the remainder of the title and insert "and amending RCW 19.285.030,  
28 19.285.040, and 19.285.080."

EFFECT: Limits the use of incremental electricity as a result of capital investment after January 1, 2010, to industrial biomass facilities commencing operation before March 1999.

Requires that, beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment.

Requires the facility to demonstrate through direct or calculated measurement the increase in electricity as a result of the capital investment.

Clarifies that an industrial facility that commenced operation prior to March 31, 1999, may only transfer or sell renewable energy credits associated with its qualified biomass energy to the qualifying utility that it is interconnected with.

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