

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5128**

Chapter 315, Laws of 2017

65th Legislature  
2017 Regular Session

ENERGY INDEPENDENCE ACT--INCREMENTAL ELECTRICAL PRODUCTION--CAPITAL  
IMPROVEMENTS

EFFECTIVE DATE: 7/23/2017

Passed by the Senate March 1, 2017  
Yeas 49 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House April 10, 2017  
Yeas 91 Nays 7

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 16, 2017 11:12 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5128** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

FILED

May 16, 2017

**Secretary of State  
State of Washington**

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ENGROSSED SENATE BILL 5128

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Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senators Takko, Rivers, and Chase

Read first time 01/13/17. Referred to Committee on Energy,  
Environment & Telecommunications.

1 AN ACT Relating to allowing incremental electricity produced as a  
2 result of certain capital investment projects to qualify as an  
3 eligible renewable resource under the energy independence act; and  
4 amending RCW 19.285.030, 19.285.040, and 19.285.080.

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

6 **Sec. 1.** RCW 19.285.030 and 2014 c 45 s 1 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Attorney general" means the Washington state office of the  
11 attorney general.

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

17 (3)(a) "Biomass energy" includes: (i) Organic by-products of  
18 pulping and the wood manufacturing process; (ii) animal manure; (iii)  
19 solid organic fuels from wood; (iv) forest or field residues; (v)  
20 untreated wooden demolition or construction debris; (vi) food waste

1 and food processing residuals; (vii) liquors derived from algae;  
2 (viii) dedicated energy crops; and (ix) yard waste.

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

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

9 (5) "Commission" means the Washington state utilities and  
10 transportation commission.

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

14 (7) "Cost-effective" has the same meaning as defined in RCW  
15 80.52.030.

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

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

20 (10) "Department" means the department of commerce or its  
21 successor.

22 (11) "Distributed generation" means an eligible renewable  
23 resource where the generation facility or any integrated cluster of  
24 such facilities has a generating capacity of not more than five  
25 megawatts.

26 (12) "Eligible renewable resource" means:

27 (a) Electricity from a generation facility powered by a renewable  
28 resource other than freshwater that commences operation after March  
29 31, 1999, where: (i) The facility is located in the Pacific  
30 Northwest; or (ii) the electricity from the facility is delivered  
31 into Washington state on a real-time basis without shaping, storage,  
32 or integration services;

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

38 (c) Hydroelectric generation from a project completed after March  
39 31, 1999, where the generation facility is located in irrigation  
40 pipes, irrigation canals, water pipes whose primary purpose is for

1 conveyance of water for municipal use, and wastewater pipes located  
2 in Washington where the generation does not result in new water  
3 diversions or impoundments;

4 (d) Qualified biomass energy; (~~or~~)

5 (e) For a qualifying utility that serves customers in other  
6 states, electricity from a generation facility powered by a renewable  
7 resource other than freshwater that commences operation after March  
8 31, 1999, where: (i) The facility is located within a state in which  
9 the qualifying utility serves retail electrical customers; and (ii)  
10 the qualifying utility owns the facility in whole or in part or has a  
11 long-term contract with the facility of at least twelve months or  
12 more; or

13 (f)(i) Incremental electricity produced as a result of a capital  
14 investment completed after January 1, 2010, that increases, relative  
15 to a baseline level of generation prior to the capital investment,  
16 the amount of electricity generated in a facility that generates  
17 qualified biomass energy as defined under subsection (18)(c)(ii) of  
18 this section and that commenced operation before March 31, 1999.

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

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

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

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

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

1 (b) "Nonpower attributes" does not include any aspects, claims,  
2 characteristics, and benefits associated with the on-site capture and  
3 destruction of methane or other greenhouse gases at a facility  
4 through a digester system, landfill gas collection system, or other  
5 mechanism, which may be separately marketable as greenhouse gas  
6 emission reduction credits, offsets, or similar tradable commodities.  
7 However, these separate avoided emissions may not result in or  
8 otherwise have the effect of attributing greenhouse gas emissions to  
9 the electricity.

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

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

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

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

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

36 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
37 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
38 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
39 fuel as defined in RCW 82.29A.135 that is not derived from crops

1 raised on land cleared from old growth or first-growth forests where  
2 the clearing occurred after December 7, 2006; or (i) biomass energy.

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

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

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

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

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

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

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

1 (ii) Beginning January 1, 2014, a qualifying utility may use  
2 single large facility conservation savings in excess of its biennial  
3 target to meet up to an additional five percent of the immediately  
4 subsequent two biennial acquisition targets, such that no more than  
5 twenty-five percent of any biennial target may be met with excess  
6 conservation savings allowed under all of the provisions of this  
7 section combined. For the purposes of this subsection (1)(c)(ii),  
8 "single large facility conservation savings" means cost-effective  
9 conservation savings achieved in a single biennial period at the  
10 premises of a single customer of a qualifying utility whose annual  
11 electricity consumption prior to the conservation savings exceeded  
12 five average megawatts.

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

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

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

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

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

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

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

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

13 (b) A qualifying utility may count distributed generation at  
14 double the facility's electrical output if the utility: (i) Owns or  
15 has contracted for the distributed generation and the associated  
16 renewable energy credits; or (ii) has contracted to purchase the  
17 associated renewable energy credits.

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

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

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

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

38 (i) Eligible renewable resources or distributed generation where  
39 the associated renewable energy credits are owned by a separate  
40 entity; or



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

4 (g) Where fossil and combustible renewable resources are cofired  
5 in one generating unit located in the Pacific Northwest where the  
6 cofiring commenced after March 31, 1999, the unit shall be considered  
7 to produce eligible renewable resources in direct proportion to the  
8 percentage of the total heat value represented by the heat value of  
9 the renewable resources.

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

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

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

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

20 (i) A qualifying utility shall be considered in compliance with  
21 an annual target in (a) of this subsection if events beyond the  
22 reasonable control of the utility that could not have been reasonably  
23 anticipated or ameliorated prevented it from meeting the renewable  
24 energy target. Such events include weather-related damage, mechanical  
25 failure, strikes, lockouts, and actions of a governmental authority  
26 that adversely affect the generation, transmission, or distribution  
27 of an eligible renewable resource under contract to a qualifying  
28 utility.

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

33 (ii) A qualifying utility may no longer use electricity and  
34 associated renewable energy credits from a qualified biomass energy  
35 facility if the associated industrial pulping or wood manufacturing  
36 facility ceases operation other than for purposes of maintenance or  
37 upgrade.

38 (k) An industrial facility that hosts a qualified biomass energy  
39 facility may only transfer or sell renewable energy credits  
40 associated with qualified biomass energy generated at its facility to

1 the qualifying utility with which it is directly interconnected with  
2 facilities owned by such a qualifying utility and that are capable of  
3 carrying electricity at transmission voltage. The qualifying utility  
4 may only use an amount of renewable energy credits associated with  
5 qualified biomass energy that are equivalent to the proportionate  
6 amount of its annual targets under (a)(ii) and (iii) of this  
7 subsection that was created by the load of the industrial facility. A  
8 qualifying utility that owns a qualified biomass energy facility may  
9 not transfer or sell renewable energy credits associated with  
10 qualified biomass energy to another person, entity, or qualifying  
11 utility.

12 (3) Utilities that become qualifying utilities after December 31,  
13 2006, shall meet the requirements in this section on a time frame  
14 comparable in length to that provided for qualifying utilities as of  
15 December 7, 2006.

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

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

21 (2) The department shall adopt rules concerning only process,  
22 timelines, and documentation to ensure the proper implementation of  
23 this chapter as it applies to qualifying utilities that are not  
24 investor-owned utilities. Those rules include, but are not limited  
25 to, rules associated with a qualifying utility's development of  
26 conservation targets under RCW 19.285.040(1); a qualifying utility's  
27 decision to pursue alternative compliance in RCW 19.285.040(2) (d) or  
28 (i) or 19.285.050(1); (~~and~~) the format and content of reports  
29 required in RCW 19.285.070; and the development of a methodology for  
30 calculating baseline levels of generation under RCW  
31 19.285.030(12)(f). Nothing in this subsection may be construed to  
32 restrict the rate-making authority of the commission or a qualifying  
33 utility as otherwise provided by law.

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

37 (4) Pursuant to the administrative procedure act, chapter 34.05  
38 RCW, rules needed for the implementation of this chapter must be

1 adopted by December 31, 2007. These rules may be revised as needed to  
2 carry out the intent and purposes of this chapter.

Passed by the Senate March 1, 2017.

Passed by the House April 10, 2017.

Approved by the Governor May 16, 2017.

Filed in Office of Secretary of State May 16, 2017.

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