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**SUBSTITUTE HOUSE BILL 1446**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Environment & Energy (originally sponsored by Representative Fey)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to prohibiting a utility from being assessed a  
2 penalty for not meeting its biennial acquisition target for cost-  
3 effective conservation in special circumstances outside the utility's  
4 control; and amending RCW 19.285.040 and 19.285.060.

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

6 **Sec. 1.** RCW 19.285.040 and 2019 c 288 s 29 are each amended to  
7 read as follows:

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

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

1 (b) Beginning January 2010, each qualifying utility shall  
2 establish and make publicly available a biennial acquisition target  
3 for cost-effective conservation consistent with its identification of  
4 achievable opportunities in (a) of this subsection, and meet that  
5 target during the subsequent two-year period. At a minimum, each  
6 biennial target must be no lower than the qualifying utility's pro  
7 rata share for that two-year period of its cost-effective  
8 conservation potential for the subsequent ten-year period.

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

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

28 (iii) Beginning January 1, 2012, and until December 31, 2017, a  
29 qualifying utility with an industrial facility located in a county  
30 with a population between ninety-five thousand and one hundred  
31 fifteen thousand that is directly interconnected with electricity  
32 facilities that are capable of carrying electricity at transmission  
33 voltage may use cost-effective conservation from that industrial  
34 facility in excess of its biennial acquisition target to help meet  
35 the immediately subsequent two biennial acquisition targets, such  
36 that no more than twenty-five percent of any biennial target may be  
37 met with excess conservation savings allowed under all of the  
38 provisions of this section combined.

39 (d) In meeting its conservation targets, a qualifying utility may  
40 count high-efficiency cogeneration owned and used by a retail

1 electric customer to meet its own needs. High-efficiency cogeneration  
2 is the sequential production of electricity and useful thermal energy  
3 from a common fuel source, where, under normal operating conditions,  
4 the facility has a useful thermal energy output of no less than  
5 thirty-three percent of the total energy output. The reduction in  
6 load due to high-efficiency cogeneration shall be: (i) Calculated as  
7 the ratio of the fuel chargeable to power heat rate of the  
8 cogeneration facility compared to the heat rate on a new and clean  
9 basis of a best-commercially available technology combined-cycle  
10 natural gas-fired combustion turbine; and (ii) counted towards  
11 meeting the biennial conservation target in the same manner as other  
12 conservation savings.

13 (e) A qualifying utility is considered in compliance with its  
14 biennial acquisition target for cost-effective conservation in (b) of  
15 this subsection if events beyond the reasonable control of the  
16 utility that could not have been reasonably anticipated or  
17 ameliorated prevented it from meeting the conservation target. Events  
18 that a qualifying utility may demonstrate were beyond its reasonable  
19 control, that could not have reasonably been anticipated or  
20 ameliorated, and that prevented it from meeting the conservation  
21 target include: (i) Natural disasters resulting in the issuance of  
22 extended emergency declarations; (ii) the cancellation of significant  
23 conservation projects; and (iii) actions of a governmental authority  
24 that adversely affects the acquisition of cost-effective conservation  
25 by the qualifying utility.

26 (f) The commission may determine if a conservation program  
27 implemented by an investor-owned utility is cost-effective based on  
28 the commission's policies and practice.

29 ~~((f))~~ (g) The commission may rely on its standard practice for  
30 review and approval of investor-owned utility conservation targets.

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

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

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

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

1 (b) A qualifying utility may count distributed generation at  
2 double the facility's electrical output if the utility: (i) Owns or  
3 has contracted for the distributed generation and the associated  
4 renewable energy credits; or (ii) has contracted to purchase the  
5 associated renewable energy credits.

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

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

20 (e) A qualifying utility may use renewable energy credits to meet  
21 the requirements of this section, subject to the limitations of this  
22 subsection.

23 (i) A renewable energy credit from electricity generated by a  
24 resource other than freshwater may be used to meet a requirement  
25 applicable to the year in which the credit was created, the year  
26 before the year in which the credit was created, or the year after  
27 the year in which the credit was created.

28 (ii) A renewable energy credit from electricity generated by  
29 freshwater:

30 (A) May only be used to meet a requirement applicable to the year  
31 in which the credit was created; and

32 (B) Must be acquired by the qualifying utility through ownership  
33 of the generation facility or through a transaction that conveyed  
34 both the electricity and the nonpower attributes of the electricity.

35 (iii) A renewable energy credit transferred to an investor-owned  
36 utility pursuant to the Bonneville power administration's residential  
37 exchange program may not be used by any utility other than the  
38 utility receiving the credit from the Bonneville power  
39 administration.

1 (iv) Each renewable energy credit may only be used once to meet  
2 the requirements of this section and must be retired using procedures  
3 of the renewable energy credit tracking system.

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

6 (i) Eligible renewable resources or distributed generation where  
7 the associated renewable energy credits are owned by a separate  
8 entity; or

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

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

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

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

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

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

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

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

1 (ii) A qualifying utility may no longer use electricity and  
2 associated renewable energy credits from a qualified biomass energy  
3 facility if the associated industrial pulping or wood manufacturing  
4 facility ceases operation other than for purposes of maintenance or  
5 upgrade.

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

20 (l) Beginning January 1, 2020, a qualifying utility may use  
21 eligible renewable resources as identified under RCW 19.285.030(12)  
22 (g) and (h) to meet its compliance obligation under this subsection  
23 (2). A qualifying utility may not transfer or sell these eligible  
24 renewable resources to another utility for compliance purposes under  
25 this chapter.

26 (m) Beginning January 1, 2030, a qualifying utility is considered  
27 to be in compliance with an annual target in (a) of this subsection  
28 if the utility uses electricity from: (i) Renewable resources and  
29 renewable energy credits as defined in RCW 19.285.030; and (ii)  
30 nonemitting electric generation as defined in RCW 19.405.020, in an  
31 amount equal to one hundred percent of the utility's average annual  
32 retail electric load. Nothing in this subsection relieves the  
33 requirements of a qualifying utility to comply with subsection (1) of  
34 this section.

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

1       **Sec. 2.** RCW 19.285.060 and 2015 c 225 s 22 are each amended to  
2 read as follows:

3       (1) Except as provided in subsection (2) of this section, a  
4 qualifying utility that fails to comply with the energy conservation  
5 or renewable energy targets established in RCW 19.285.040 shall pay  
6 an administrative penalty to the state of Washington in the amount of  
7 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,  
8 this penalty shall be adjusted annually according to the rate of  
9 change of the inflation indicator, gross domestic product-implicit  
10 price deflator, as published by the bureau of economic analysis of  
11 the United States department of commerce or its successor.

12       (2) A qualifying utility that does not meet an annual renewable  
13 energy target established in RCW 19.285.040(2) or biennial  
14 acquisition target for cost-effective conservation in RCW  
15 19.285.040(1) is exempt from the administrative penalty in subsection  
16 (1) of this section for that year if the commission for investor-  
17 owned utilities or the auditor for all other qualifying utilities  
18 determines that the utility complied with RCW 19.285.040 (1)(e) or  
19 (2) (d) or (i) or 19.285.050(1).

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

24       (4) The commission shall determine if an investor-owned utility  
25 may recover the cost of this administrative penalty in electric  
26 rates, and may consider providing positive incentives for an  
27 investor-owned utility to exceed the targets established in RCW  
28 19.285.040.

29       (5) Administrative penalties collected under this chapter shall  
30 be deposited into the energy independence act special account which  
31 is hereby created. All receipts from administrative penalties  
32 collected under this chapter must be deposited into the account.  
33 Expenditures from the account may be used only for the purchase of  
34 renewable energy credits or for energy conservation projects at  
35 public facilities, local government facilities, community colleges,  
36 or state universities. The state shall own and retire any renewable  
37 energy credits purchased using moneys from the account. Only the  
38 director of enterprise services or the director's designee may  
39 authorize expenditures from the account. The account is subject to

1 allotment procedures under chapter 43.88 RCW, but an appropriation is  
2 not required for expenditures.

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

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

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