FINAL BILL REPORT
ESSB 5445

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Synopsis as Enacted

Brief Description: Encouraging the development of distributed energy resources.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Boehnke, Hasegawa and Slatter).

Senate Committee on Environment, Energy & Technology
House Committee on Environment & Energy
House Committee on Appropriations

Background: State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts.

If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement. If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

SEPA laws and SEPA rules, adopted by the Department of Ecology, provide categorical exemptions to remove certain proposals or agency actions from review.

Open Space and Land Use Taxation Act. All property is subject to a property tax each year based on the property's highest and best use, unless a specific exemption is provided by law. The Washington Constitution authorizes agricultural, timber, and open space lands to be valued on the basis of their current use rather than fair market value. Two programs of current use valuation have been established; one program for forest lands, and a second

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program that includes open space lands, farm and agricultural lands, and timber lands (Open Space Program).

To qualify for the Open Space Program, farm and agricultural lands must be 20 or more acres and devoted primarily to commercial agricultural purposes or enrolled in the federal Conservation Reserve Program. Parcels of land less than 20 acres devoted primarily to agriculture may qualify for the Current Use Valuation Program if certain income tests are met. Farm and agricultural land also includes certain incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.

If the property no longer satisfies the criteria for classification, the county assessor notifies the owner in writing that the property will be removed from the Open Space Program. When the property is removed from its current use classification, back taxes plus interest must be paid, plus an additional 20 percent penalty.

Energy Independence Act. Approved by voters in 2006, the Energy Independence Act (EIA), also known as Initiative 937, requires electric utilities with 25,000 or more customers to meet targets for energy conservation and using eligible renewable resources. Utilities that must comply with the EIA are called qualifying utilities. Currently, 18 utilities are qualifying utilities.

Each qualifying electric utility must pursue all available conservation that is cost effective, reliable, and feasible. Cost-effectiveness is determined by using methodologies consistent with those developed by the Pacific Northwest Electric Power and Conservation Planning Council.

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.

A utility is not required to meet a renewable energy target if it spends at least 4 percent of its retail revenue requirement on the incremental cost of renewable energy and renewable energy credits. The cost cap for a utility that has no load growth is 1 percent.

Summary: Distributed Energy Priorities. Categories of clean energy facilities and nonproject activities are determined to be distributed energy priorities (DEPs), including:

- solar energy generation and accompanying energy storage and electrical transmission and distribution, including electric vehicle charging, located:
    1. within an easement, right-of-way, or existing footprint of electrical

transmission facilities or electric utility infrastructure sites;
2. within an easement, right-of-way, or existing footprint of state highways or county roads;
3. on structures over or enclosing irrigation canals, drainage ditches, certain types of reservoirs, and similar water impoundments that do not contain salmon or steelhead trout runs;
4. on elevated structures over parking lots;
5. on lands within a transportation facility or restricted from other developments by transportation facility operations;
6. on closed or capped portions of landfills and on reclaimed or former surface mine lands or contaminated sites;
7. on existing structures; and
8. as agrivoltaics facilities;

- wind energy generation that is not required to have obstruction lighting and does not have any wind turbines with a hub height above 75 feet, and accompanying energy storage and electrical transmission and distribution, including electric vehicle charging;
- energy storage facilities located:
    1. within an easement, right-of-way, or existing footprint of electrical transmission facilities or electric utility infrastructure sites;
    2. within an easement, right-of-way, or existing footprint of state highways or city or county roads;
    3. on lands within a transportation facility or restricted from other developments by transportation facility operations;
    4. on closed or capped portions of landfills and on reclaimed or former surface mine lands or contaminated sites; and
    5. on existing structures;
- microgrids that are a group of interconnected loads, energy generation, and other distributed energy resources that act as a single controllable entity with respect to the electric grid;
- programs that reduce electricity demand, consumption, or provide electricity storage or ancillary services to an electric utility; and
- programs that reduce energy demand, manage the level or timing of energy consumption, or provide thermal energy storage.

Agrivoltaics facilities must meet certain criteria in order to qualify as a DEP, including that the facility is a ground-mounted photovoltaic solar energy system that must:

- be designed to be operated coincident with the continued productive agricultural use of the land;
- include eligible agricultural products and uses, which is any combination of crop production, grazing, animal husbandry, and apiaries with pollinator habitat;
- not permanently or significantly degrade the productivity of the land after the cessation of the operation of the facility or involve the sale of a water right associated with the land;

- be designed to achieve integrated and simultaneous production of solar energy and marketable agricultural products by an agricultural producer; and
- be designed and installed in a manner that supports the continuation of viable farm operation for the life of the array.

State Environmental Policy Act. The following actions are categorically exempt from SEPA, except when undertaken wholly or partly on lands covered by water:

- the placement of solar panel arrays or for the construction of structures that support solar panels with a footprint of less than 1000 feet on previously disturbed or developed lands that are not in farm and agricultural land, timberland, or open space conservation status, and if there is one such structure per parcel;
- construction of structures to support solar energy panels located only over parking lots; and
- solar energy generation and accompanying energy storage, transmission, and distribution facilities that do not penetrate an asphalt or soil cap and are served by and accessible to emergency fire response services and are located wholly on a landfill or reclaimed or former surface mine.

Open Space and Land Use Taxation Act. Land on which an agrivoltaics facility is located may be considered agricultural or open space land for purposes of the Open Space and Land Use Taxation Act. The addition of an agrivoltaics facility does not constitute a reclassification, withdrawal, or removal of lands under the Open Space and Land Use Taxation Act, and thus does not require the payment of seven years of back taxes plus interest and a 20 percent penalty.

Energy Independent Act. For the purposes of achieving renewable energy targets under the EIA, a qualifying utility may count the distributed generation owned or contracted for purchase along with RECs at quadruple the facility's electrical output, instead of double. The new distributed energy generation must commence operation after the effective date of the act; be located within the geographical area where the utility provides service; and be a DEP.

A qualifying utility may use any combination of eligible renewable resources, accelerated conservation, and demand response to be in compliance with EIA renewable energy targets.

Accelerated conservation is defined as conservation included in a qualifying utility's most recent cost-effective conservation potential under the EIA and in excess of the biennial acquisition target under the EIA. The definition incudes a formula for measuring the annual energy savings and that any accelerated conservation savings may not be included as excess conservation savings under the EIA.

Demand response is defined as changes in electric usage by demand-side resources from their normal consumption patterns in response to changes in the price of electricity, or to

incentive payments designed to induce lower electricity use, at times of high wholesale market prices or when system reliability is jeopardized, and includes energy storage that is a DEP and enables the utility to reduce system peak demand. A formula is provided for converting demand response to a megawatt-hour for the purpose of quantifying the amount of eligible demand response. A utility claiming demand response resources under the EIA must maintain and apply measurement and verification protocols to determine the amount of capacity resulting from the resources and verify the acquisition or installation of resources being claimed.

Votes on Final Passage:

Senate	46	2	
House	96	1	(House amended)
Senate	48	0	(Senate concurred)

Effective: July 27, 2025