SENATE BILL REPORT
ESSB 5445

As Amended by House, April 15, 2025

Title: An act relating to encouraging the development of distributed energy resources.

Brief Description: Encouraging the development of distributed energy resources.

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

Brief History:

Committee Activity: Environment, Energy & Technology: 2/04/25, 2/21/25 [DPS].

Floor Activity: Passed Senate: 3/11/25, 46-2.
Passed House: 4/15/25, 96-1.

Brief Summary of Engrossed First Substitute Bill

- Determines that certain types of distributed energy projects and activities are distributed energy priorities.
- Provides statutory exemptions from the State Environmental Policy Act for solar energy generation in certain locations.
- Specifies the addition of an agrivoltaic facility to land classified as farm and agricultural open space land does not constitute a reclassification, withdrawal, or removal from open space classification and is not subject to additional tax.
- Specifies that an electric utility may use any combination of eligible renewable resources and certain distributed energy priority projects to comply with renewable energy targets under the Energy Independence Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5445 be substituted therefor, and the substitute bill do pass.

Signed by Senators Shewmake, Chair; Slatter, Vice Chair; Boehnke, Ranking Member; Dhingra, Harris, Liias, Lovelett, MacEwen, Ramos, Short and Wellman.

Staff: Kimberly Cushing (786-7421)

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 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 of Engrossed First Substitute Bill: 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;
    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;
    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;
- 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 or provision of ecological value;
- include eligible agricultural produces 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:

- construction of structures of 1000 square feet or less to support solar energy panels or equipment;
- 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. A qualifying utility may use any combination of eligible renewable resources and DEP projects to be in compliance with EIA renewable energy targets.

A DEP project is any combination of projects in the utility's service territory that include accelerated conservation, demand response, distributed energy storage, distributed soler energy generation, and distributed wind energy generation.

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. A formula is provided for converting demand response to a megawatt-hour for the purpose of quantifying the amount of eligible demand response.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This is an opportunity to look at these pragmatic solutions where we face the increase in electricity demand from data centers, manufacturing, and electrification on our transportation systems. We can incentivize projects in local areas with utility funds to build out renewable generation, conservation, and also resilience on the grid. Originally the renewable portfolio standard was created to provide incentives to invest in new projects. Many utilities purchase renewable energy credits to meet their CETA and EIA requirements, and often these credits are purchased from out of state projects that are already on the grid. We'd like to keep the funds for in-state project that benefit our gird and local economy. We'd like to include hydrogen storage. We are facing rapidly increasing electricity demand and utilities need to

be able to make some critical investments in their local distribution systems and new carbon-free resources, demand response, and conservation. Utilities are still spending about 2 percent of their revenue requirement to comply with the renewable requirement under the EIA. This bill provides an alternative compliance option that allows utilities to shift some investment to fund local clean energy projects and grid resiliency. The approach strengthens our local utility distribution system and keeps investments within our communities with direct clean energy related projects.

CON: I-937 encourages the investment in both clean energy as well as conservation. The intent was for all utilities with more than 25,000 customers to invest in the clean energy transition with nonhydro renewables, which remains an important goal today as utilities are making unprecedented investments to meet load growth and replace retiring coal. The bill would allow utilities to forego purchasing nonhydro renewables if they spend money instead on resilience projects, which are investments the utilities must pursue anyway. We might be willing to support broad reforms to I-937 if those reforms committed utilities to doing more on conservation. It is sensible that utilities need to decarbonize; however, utilities and hence rate payers are being burdened by the impacts of tech and data center development on regional resources. Legislation must not name utilities as responsible for bearing the brunt of this development. The bill unfortunately changes the cost effective standard that's established in the EIA and would have a direct negative impact for ratepayers because by definition, you would be investing in projects that are no longer cost-effective resources. Additionally, smaller local resources are likely to be more expensive than utility scale resources without geographic considerations.

OTHER: We are concerned about how we would implement the bill given some of the vague terms and provisions in the bill. We are not sure how to measure investment levels provided in the bill, or whether existing projects would count or if the list of eligible projects actually further the resilience of the grid. Some may be valid as local projects, even if they are more expensive than the other renewable resources that the utilities might pursue.

Persons Testifying: PRO: Senator Matt Boehnke, Prime Sponsor; Dave Warren, WA Green Hydrogen Alliance; Liz Anderson, Washington Public Utility Districts Association; Samantha Louderback, Washington Rural Electric Cooperative Association; Sheila Corson, Mason PUD #3.

CON: Charlee Thompson, NW Energy Coalition; Heather Nicholson; Brandon Houskeeper, Alliance of Western Energy Consumers.

OTHER: Glenn Blackmon, Washington State Department of Commerce.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Adds solar generation and energy storage located within the easement, right-of-way, or

existing footprint of electric utility infrastructure sites, as well as electrical transmission facilities, as distributed energy priorities (DEP).

- Adds microgrids as a DEP category, and defines microgrids as 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.
- Amends the SEPA categorical exemption to apply to 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 provides for this SEPA categorical exemption to apply only if there is one such structure per parcel.
- Specifies that the changes to the treatment of agrivoltaic facilities under the Open Space Taxation Act are not subject to tax preference performance statement requirements and do not automatically expire after ten years.
- Increases, for purposes of achieving renewable energy targets under the EIA, the multiplier of the electrical output of certain distributed electrical generation facilities through 2029 from being a double multiplier to being a quadruple multiplier, but only for new distributed energy generation that: commences operation after the effective date of the act; is located within the geographical area where the utility provides service; and is a DEP.
- Authorizes qualifying utilities to meet EIA renewable energy targets through any combination of eligible renewable resources, accelerated conservation in excess of the utility's biennial acquisition target measured based on the energy savings achieved through January 1, 2030, and demand response as measured using a specified methodology, and which includes energy storage that is a DEP when the energy storage enables the utility to reduce system peak demand.
- Directs that 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.
- Amends the intent section.