
SENATE BILL 5146

State of Washington

68th Legislature

2023 Regular Session

By Senator Short

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1 AN ACT Relating to removing regulatory restrictions on
2 hydropower; amending RCW 19.405.040 and 19.405.050; and creating a
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the Washington
6 clean energy transformation act unnecessarily restricts the use of
7 new or improved hydroelectric generation to meet Washington's energy
8 goals. The legislature further finds that hydropower is a renewable
9 resource that should be widely available for the benefit of
10 Washington's electricity customers. Therefore, the legislature
11 intends to remove certain regulatory restrictions on the use of new
12 or improved hydroelectric generation to promote reliable and
13 affordable power for Washington residents.

14 **Sec. 2.** RCW 19.405.040 and 2019 c 288 s 4 are each amended to
15 read as follows:

16 (1) It is the policy of the state that all retail sales of
17 electricity to Washington retail electric customers be greenhouse gas
18 neutral by January 1, 2030.

19 (a) For the four-year compliance period beginning January 1,
20 2030, and for each multiyear compliance period thereafter through

1 December 31, 2044, an electric utility must demonstrate its
2 compliance with this standard using a combination of nonemitting
3 electric generation and electricity from renewable resources, or
4 alternative compliance options, as provided in this section. To
5 achieve compliance with this standard, an electric utility must: (i)
6 Pursue all cost-effective, reliable, and feasible conservation and
7 efficiency resources to reduce or manage retail electric load, using
8 the methodology established in RCW 19.285.040, if applicable; and
9 (ii) use electricity from renewable resources and nonemitting
10 electric generation in an amount equal to (~~one hundred~~) 100 percent
11 of the utility's retail electric loads over each multiyear compliance
12 period. An electric utility must achieve compliance with this
13 standard for the following compliance periods: January 1, 2030,
14 through December 31, 2033; January 1, 2034, through December 31,
15 2037; January 1, 2038, through December 31, 2041; and January 1,
16 2042, through December 31, 2044.

17 (b) Through December 31, 2044, an electric utility may satisfy up
18 to (~~twenty~~) 20 percent of its compliance obligation under (a) of
19 this subsection with an alternative compliance option consistent with
20 this section. An alternative compliance option may include any
21 combination of the following:

22 (i) Making an alternative compliance payment under RCW
23 19.405.090(2);

24 (ii) Using unbundled renewable energy credits, provided that
25 there is no double counting of any nonpower attributes associated
26 with renewable energy credits within Washington or programs in other
27 jurisdictions, as follows:

28 (A) Unbundled renewable energy credits produced from eligible
29 renewable resources, as defined under RCW 19.285.030, which may be
30 used by the electric utility for compliance with RCW 19.285.040 and
31 this section as provided under RCW 19.285.040(2)(e); and

32 (B) Unbundled renewable energy credits, other than those included
33 in (b)(ii)(A) of this subsection, that represent electricity
34 generated within the compliance period;

35 (iii) Investing in energy transformation projects, including
36 additional conservation and efficiency resources beyond what is
37 otherwise required under this section, provided the projects meet the
38 requirements of subsection (2) of this section and are not credited
39 as resources used to meet the standard under (a) of this subsection;
40 or

1 (iv) Using electricity from an energy recovery facility using
2 municipal solid waste as the principal fuel source, where the
3 facility was constructed prior to 1992, and the facility is operated
4 in compliance with federal laws and regulations and meets state air
5 quality standards. An electric utility may only use electricity from
6 such an energy recovery facility if the department and the department
7 of ecology determine that electricity generation at the facility
8 provides a net reduction in greenhouse gas emissions compared to any
9 other available waste management best practice. The determination
10 must be based on a life-cycle analysis comparing the energy recovery
11 facility to other technologies available in the jurisdiction in which
12 the facility is located for the waste management best practices of
13 waste reduction, recycling, composting, and minimizing the use of a
14 landfill.

15 (c) Electricity from renewable resources used to meet the
16 standard under (a) of this subsection must be verified by the
17 retirement of renewable energy credits. Renewable energy credits must
18 be tracked and retired in the tracking system selected by the
19 department.

20 ~~(d) ((Hydroelectric generation used by an electric utility in
21 meeting the standard under (a) of this subsection may not include new
22 diversions, new impoundments, new bypass reaches, or expansion of
23 existing reservoirs constructed after May 7, 2019, unless the
24 diversions, bypass reaches, or reservoir expansions are necessary for
25 the operation of a pumped storage facility that: (i) Does not
26 conflict with existing state or federal fish recovery plans; and (ii)
27 complies with all local, state, and federal laws and regulations.~~

28 ~~(e) Nothing in (d) of this subsection precludes an electric
29 utility that owns and operates hydroelectric generating facilities,
30 or the owner of a hydroelectric generating facility whose energy
31 output is marketed by the Bonneville power administration, from
32 making efficiency or other improvements to its hydroelectric
33 generating facilities existing as of May 7, 2019, or from installing
34 hydroelectric generation in pipes, culverts, irrigation canals, and
35 other man-made waterways, as long as those changes do not create
36 conflicts with existing state or federal fish recovery plans and
37 comply with all local, state, and federal laws and regulations.~~

38 ~~(f))~~ Nonemitting electric generation used to meet the standard
39 under (a) of this subsection must be generated during the compliance
40 period and must be verified by documentation that the electric

1 utility owns the nonpower attributes of the electricity generated by
2 the nonemitting electric generation resource.

3 ~~((g))~~ (e) Nothing in this section prohibits an electric utility
4 from purchasing or exchanging power from the Bonneville power
5 administration.

6 (2) Investments in energy transformation projects used to satisfy
7 an alternative compliance option provided under subsection (1)(b) of
8 this section must use criteria developed by the department of
9 ecology, in consultation with the department and the commission. For
10 the purpose of crediting an energy transformation project toward the
11 standard in subsection (1)(a) of this section, the department of
12 ecology must establish a conversion factor of emissions reductions
13 resulting from energy transformation projects to megawatt-hours of
14 electricity from nonemitting electric generation that is consistent
15 with the emission factors for unspecified electricity, or for energy
16 transformation projects in the transportation sector, consistent with
17 default emissions or conversion factors established by other
18 jurisdictions for clean alternative fuels. Emissions reductions from
19 energy transformation projects must be:

20 (a) Real, specific, identifiable, and quantifiable;

21 (b) Permanent: The department of ecology must look to other
22 jurisdictions in setting this standard and make a reasonable
23 determination on length of time;

24 (c) Enforceable by the state of Washington;

25 (d) Verifiable;

26 (e) Not required by another statute, rule, or other legal
27 requirement; and

28 (f) Not reasonably assumed to occur absent investment, or if an
29 investment has already been made, not reasonably assumed to occur
30 absent additional funding in the near future.

31 (3) Energy transformation projects must be associated with the
32 consumption of energy in Washington and must not create a new use of
33 fossil fuels that results in a net increase of fossil fuel usage.

34 (4) The compliance eligibility of energy transformation projects
35 may be scaled or prorated by an approved protocol in order to
36 distinguish effects related to reductions in electricity usage from
37 reductions in fossil fuel usage.

38 (5) Any compliance obligation fulfilled through an investment in
39 an energy transformation project is eligible for use only: (a) By the
40 electric utility that makes the investment; (b) if the investment is

1 made by the Bonneville power administration, by electric utilities
2 that are preference customers of the Bonneville power administration;
3 or (c) if the investment is made by a joint operating agency
4 organized under chapter 43.52 RCW, by a member of the joint operating
5 agency. An electric utility making an investment in partnership with
6 another electric utility or entity may claim credit proportional to
7 its share invested in the total project cost.

8 (6)(a) In meeting the standard under subsection (1) of this
9 section, an electric utility must, consistent with the requirements
10 of RCW 19.285.040, if applicable, pursue all cost-effective,
11 reliable, and feasible conservation and efficiency resources, and
12 demand response. In making new investments, an electric utility must,
13 to the maximum extent feasible:

14 (i) Achieve targets at the lowest reasonable cost, considering
15 risk;

16 (ii) Consider acquisition of existing renewable resources; and

17 (iii) In the acquisition of new resources constructed after May
18 7, 2019, rely on renewable resources and energy storage, insofar as
19 doing so is consistent with (a)(i) of this subsection.

20 (b) Electric utilities subject to RCW 19.285.040 must demonstrate
21 pursuit of all conservation and efficiency resources through
22 compliance with the requirements in RCW 19.285.040.

23 (7) An electric utility that fails to meet the requirements of
24 this section must pay the administrative penalty established under
25 RCW 19.405.090(1), except as otherwise provided in this chapter.

26 (8) In complying with this section, an electric utility must,
27 consistent with the requirements of RCW 19.280.030 and 19.405.140,
28 ensure that all customers are benefiting from the transition to clean
29 energy: Through the equitable distribution of energy and nonenergy
30 benefits and reduction of burdens to vulnerable populations and
31 highly impacted communities; long-term and short-term public health
32 and environmental benefits and reduction of costs and risks; and
33 energy security and resiliency.

34 (9) Affected market customers must comply with the standard
35 established under subsection (1) of this section.

36 (10) A market customer that purchases electricity exclusively
37 from carbon-free resources and eligible renewable resources, as
38 defined in RCW 19.285.030 as of January 1, 2019, pursuant to a
39 special contract with an investor-owned utility approved, prior to
40 May 7, 2019, by order of the commission is subject to the

1 requirements of such an order and not to the standard established in
2 this section. For purposes of interpreting any such special contract,
3 chapter 19.285 RCW, as in effect on January 1, 2019, is not, either
4 directly or indirectly, amended or supplemented.

5 (11) To reduce costs for utility customers or avoid exceeding the
6 cost impact limit in RCW 19.405.060(3)(a), a multistate electric
7 utility with fewer than (~~two hundred fifty thousand~~) 250,000
8 customers in Washington may apply the total amount of megawatt-hours
9 of coal-fired resources eliminated from the utility's allocation of
10 electricity before December 31, 2025, as an equivalent amount of
11 megawatt-hours of nonemitting electric generation or electricity from
12 renewable resources required to comply with subsection (1)(a) of this
13 section. The utility must demonstrate that for every megawatt-hour of
14 early action compliance credit there is a real, permanent reduction
15 in greenhouse gas emissions in the western interconnection directly
16 associated with that credit. A multistate electric utility must
17 request to use early action compliance credit in its clean energy
18 implementation plan that is submitted under RCW 19.405.060. The
19 multistate electric utility must specify in its clean energy
20 implementation plan the compliance years to which the early action
21 compliance credit will apply, but in no event may the multistate
22 electric utility use the early action compliance credits beyond 2035.
23 The commission must establish conditions for use of early action
24 compliance credits, including a determination of whether action
25 constitutes early action, before the multistate electric utility's
26 use of early action compliance credits in a clean energy
27 implementation plan.

28 **Sec. 3.** RCW 19.405.050 and 2019 c 288 s 5 are each amended to
29 read as follows:

30 (1) It is the policy of the state that nonemitting electric
31 generation and electricity from renewable resources supply (~~one~~
32 ~~hundred~~) 100 percent of all sales of electricity to Washington
33 retail electric customers by January 1, 2045. By January 1, 2045, and
34 each year thereafter, each electric utility must demonstrate its
35 compliance with this standard using a combination of nonemitting
36 electric generation and electricity from renewable resources.

37 (2) Each electric utility must incorporate subsection (1) of this
38 section into all relevant planning and resource acquisition practices
39 including, but not limited to: Resource planning under chapter 19.280

1 RCW; the construction or acquisition of property, including electric
2 generating facilities; and the provision of electricity service to
3 retail electric customers.

4 (3) In planning to meet projected demand consistent with the
5 requirements of subsection (2) of this section and RCW 19.285.040, if
6 applicable, an electric utility must pursue all cost-effective,
7 reliable, and feasible conservation and efficiency resources, and
8 demand response. In making new investments, an electric utility must,
9 to the maximum extent feasible:

10 (a) Achieve targets at the lowest reasonable cost, considering
11 risk;

12 (b) Consider acquisition of existing renewable resources; and

13 (c) In the acquisition of new resources constructed after May 7,
14 2019, rely on renewable resources and energy storage, insofar as
15 doing so is consistent with (a) of this subsection.

16 (4) The commission, department, energy facility site evaluation
17 council, department of ecology, and all other state agencies must
18 incorporate this section into all relevant planning and utilize all
19 programs authorized by statute to achieve subsection (1) of this
20 section.

21 ~~(5) ((a) Hydroelectric generation used by an electric utility to~~
22 ~~satisfy the requirements of this section may not include new~~
23 ~~diversions, new impoundments, new bypass reaches, or expansion of~~
24 ~~existing reservoirs constructed after May 7, 2019, unless the~~
25 ~~diversions, bypass reaches, or reservoir expansions are necessary for~~
26 ~~the operation of a pumped storage facility that: (i) Does not~~
27 ~~conflict with existing state or federal fish recovery plans; and (ii)~~
28 ~~complies with all local, state, and federal laws and regulations.~~

29 ~~(b) Nothing in (a) of this subsection precludes an electric~~
30 ~~utility that owns and operates hydroelectric generating facilities,~~
31 ~~or the owner of a hydroelectric generating facility whose energy~~
32 ~~output is marketed by the Bonneville power administration, from~~
33 ~~making efficiency or other improvements to its hydroelectric~~
34 ~~generating facilities existing as of May 7, 2019, or from installing~~
35 ~~hydroelectric generation in pipes, culverts, irrigation canals, and~~
36 ~~other man-made waterways as long as those changes do not create~~
37 ~~conflicts with existing state or federal fish recovery plans and~~
38 ~~comply with all local, state, and federal laws and regulations.~~

1 ~~(6)~~) Nothing in this section prohibits an electric utility from
2 purchasing or exchanging power from the Bonneville power
3 administration.

4 ~~((7))~~ (6) Affected market customers must comply with the
5 obligations of this section.

6 ~~((8))~~ (7) Any market customer that purchases electricity
7 exclusively from carbon-free resources and eligible renewable
8 resources, as defined in RCW 19.285.030 as of January 1, 2019,
9 pursuant to a special contract with an investor-owned utility
10 approved, prior to May 7, 2019, by order of the commission is subject
11 to the requirements of such an order and not to the standards
12 established in this section. For the purposes of interpreting such a
13 special contract, chapter 19.285 RCW, as in effect on January 1,
14 2019, is not, either directly or indirectly, amended or supplemented.

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