INITIATIVE MEASURE 937

PROPOSED BY INITIATIVE PETITION

Official Ballot Title:

Initiative Measure No. 937 concerns energy resource use by certain electric utilities.

This measure would require certain electric utilities with 25,000 or more customers to meet certain targets for energy conservation and use of renewable energy resources, as defined, including energy credits, or pay penalties.

Should this measure be enacted into law?

Yes [ ] No [ ]

Note: The Official Ballot Title and Explanatory Statement were written by the Attorney General as required by law. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth fiscal analysis, visit www.ofm.wa.gov/initiatives/default.htm . The complete text of Initiative Measure 937 begins on page 23.

Fiscal Impact Statement

Fiscal Impact Statement for Initiative 937

Initiative 937 would cost state government $2.34 million in administrative costs over 14 years or an average of $167,000 per year. The offices of the Attorney General, Auditor, Utilities and Transportation Commission, and the departments of Community Trade and Economic Development, and Labor and Industries each would have a role in monitoring or assisting compliance. The initiative's fiscal impact on Washington's local governments cannot be determined due to variables ranging from future fuel costs to changes in demand for electricity. For the same reason, the impact of electricity costs for state and local governments cannot be determined.

Assumptions for Fiscal Analysis of Initiative 937

- The initiative requires the 17 largest electric utilities, which includes both public and private entities, in Washington to have 15 percent of their power supply generated from renewable resources by 2020; interim targets are also established. The utilities must also set and meet energy conservation targets starting in 2010.

- The Attorney General, State Auditor, Utilities and Transportation Commission, and the departments of Community Trade and Economic Development, and Labor and Industries each would require additional funds to implement the initiative. These funds would pay for: enforcement activity by state agencies to ensure resource targets were being met; rule making; legal advice; additional audits; and development of required apprenticeship programs for the renewable energy field.

- Local utility cost and revenue impacts are a function of fuel mix, load growth, and future fuel costs and cannot be estimated at this time.

INITIATIVE MEASURE 937

Explanatory Statement

The law as it presently exists:

Electricity is supplied in Washington by both privately-owned companies (investor-owned utilities) and by publicly-owned utilities (utilities owned by cities, public utility districts, and certain other local government units). Some of these utilities operate their own facilities for generating electricity (typically hydroelectric dams or coal- or gas-fired generators). Some of these utilities purchase some or all of their electrical power from other utilities, from private producers or sellers of power, or from regional governmental entities such as the Bonneville Power Administration.

The state Utilities and Transportation Commission (UTC) regulates the rates and practices of investor-owned electric utilities serving customers in this state. Under existing law, the UTC is required to adopt and implement policies to provide financial incentives for energy efficiency programs, and may authorize utilities to issue conservation bonds for the construction, acquisition, and operation of conservation assets. Each investor-owned electric utility has conservation service tariffs that charge rates sufficient to recover from its customers the utility's cost of conservation investment.

The UTC does not regulate publicly-owned electric utilities that serve customers in this state. These utilities are directly responsible to the voters in their service territories for their rates, services, and policies. Under existing law, cities operating electric utilities may issue bonds or otherwise borrow money for energy conservation purposes, and are required to develop conservation plans to assist the public in conserving energy. Public utility districts are subject to similar energy conservation planning requirements, and are also authorized to assist citizens by financing the acquisition and installation of materials and equipment for energy conservation purposes.

The effect of the proposed measure, if it becomes law:

Under existing law, electric utilities in this state are not obligated to meet any specific numeric targets for either energy conservation or use of renewable resources to produce power. The proposed measure would impose targets for energy conservation and use of eligible renewable resources on all electric utilities that serve more than 25,000 customers in this state.

Energy conservation. By January 1, 2010, each such electric utility would be required to identify its "achievable cost-effective conservation potential" through 2019, and to update this assessment at least every two years. "Conservation" would mean "reduction in electric power consumption resulting from increases in the efficiency of energy use, production or distribution." Each utility would be required to set an annual target consisting of a certain share of this achievable cost-effective conservation potential, and to meet that share of conservation. In determining whether a utility meets its annual conservation target, the utility could include the reduction in electric energy sold to retail customers which own and use a high-efficiency cogeneration facility to meet some of their own power needs.

Renewable resources. Each utility would also be required to meet specific targets for using eligible renewable resources to produce electricity, stated as a percentage of the utility's load. "Load" refers to the total amount of electricity the utility sold that year to its retail customers. Examples of eligible renewable resources include wind farms, solar panels, and geothermal plants. With limited exceptions, use of fresh water by hydroelectric dams and plants is not included as an eligible renewable resource.

Each utility would have to use renewable resources to serve at least three percent (3%) of its load by 2012 through 2015; nine percent (9%) of load by 2016 through 2019, and fifteen percent (15%) of load by 2020 and thereafter. A utility could comply with its annual renewable resource target by using the requisite amount of eligible renewable resources, by purchasing enough eligible renewable resource credits (or a combination of each), or by investing at least four percent (4%) of its total annual retail revenue requirement in renewable resources.

Cost recovery, penalties, reporting and enforcement. An investor-owned utility would be entitled to recover from its customers all costs the utility prudently incurred to comply with the measure. Similarly, each publicly-owned utility would be expected to recover its cost of compliance from its customers.

If a utility fails to comply with either the energy conservation or the renewable energy targets, it would have to pay a penalty in the amount of $50 for each megawatt-hour of shortfall. This penalty amount would be adjusted annually for inflation. Penalty payments would go into a special account, and could only be used for the purchase of renewable energy credits or for energy conservation projects at state and local government facilities or publicly-owned educational institutions.

In each year beginning in June 2012, each utility would be required to report to the state Department of Community, Trade, and Economic Development (CTED) on the utility's progress in the preceding year in meeting the targets. The investor-owned utilities would supply the same information to the UTC. Each utility would be required to make these reports available to its customers.

The UTC would be authorized to implement and enforce the measure as to investor-owned utilities, and to adopt rules accordingly. For publicly-owned utilities, CTED would be authorized to adopt procedural rules and documentation requirements; the state auditor would be responsible for auditing compliance with the measure; and the Attorney General's Office would be responsible for enforcement.

Statement For Initiative Measure 937

INITIATIVE 937 PROVIDES A CLEANER, MORE AFFORDABLE ENERGY FUTURE

As Washington's demand for energy grows, we can choose where we get our electricity.

We can either burn more fossil fuels like coal that pollute the air. Or we can use more clean, affordable renewable energy like wind and solar power – produced here in the Northwest.

I-937 is the cleaner, more affordable energy choice:

- *15% renewable energy*. It requires the largest electric utilities to get 15% of their electricity from *new* renewable energy by 2020.
- *Energy conservation*. It requires utilities to help consumers and businesses save money through energy conservation.

INITIATIVE 937 SAVES ENERGY AND SAVES US MONEY

I-937 gives us cheaper, renewable alternatives like wind and solar. According to Puget Sound Energy, just two Washington wind farms are projected to save consumers $170 million. Renewable energy strengthens family farms by paying up to $5,000/year per wind turbine.

I-937 also saves money by requiring utilities to offer energy efficiency programs, like cash rebates for energy efficient appliances, home weatherization, and lighting, heating and cooling systems for businesses.

INITIATIVE 937 IS A COMMON SENSE, PROVEN APPROACH

I-937 is an approach that's already working in 20 states. I-937 lets us take hold of our energy future and reduce our dependence on fossil fuels.

INITIATIVE 937 WILL GIVE US CLEANER AIR

Pollution from fossil fuels contributes to thousands of cases of lung disease and asthma each year. Renewable energy helps protect our families' health by keeping our air clean.

Join the broad coalition including Union of Concerned Scientists, Washington Public Utility District Association, and Physicians for Social Responsibility choosing a clean energy future. *Vote yes! on I-937.*

For more information, visit www.yeson937.org or call 206.283.3335.

Rebuttal of Statement Against

Don't be misled by corporate polluters. I-937 opponents run the Washington Research Council; don't trust its study.

I-937 will save us energy and money – through conservation and cheaper, cleaner energy.

Twenty states have adopted this approach, with proven cost savings – in just two years, Colorado consumers have saved $14 million.

I-937 protects consumers and reduces dependence on fossil fuels.

Yes on I-937! For cleaner air and more affordable energy.

Voters' Pamphlet Argument Prepared by:

NINA CARTER, Executive Director, Audubon Washington; GREGORY REDDING, M.D., President-elect, American Lung Association of Washington and Idaho; BARBARA SEITLE, President, League of Women Voters of Washington; BOB POWERS, family farmers, Bickleton, Washington (Klickitat County); MICHAEL O'SULLIVAN, Government Relations, American Cancer Society, Great West Division; ART BOULTON, President, Washington State Alliance of Retired Americans.

Statement Against Initiative Measure 937

I-937 WILL INCREASE ELECTRIC RATES AND UTILITY TAXES FOR HOMES AND BUSINESSES.

Alternative energy projects are being built now, but when required by law energy will be more costly for everyone. The non-partisan Washington Research Council estimates that I-937 will cost at least $185 million per year and could cost twice that much. Vote *no* on higher energy costs.

Alternative energy projects are heavily subsidized by a federal tax cut that ends next year. If it is not renewed by Congress, the cost for alternative energy could increase an extra 40%.

Higher energy costs put family-wage manufacturing and high-tech jobs at risk and hurt hospitals, family farms and small businesses.

Lower-income households and senior citizens on fixed incomes will be disproportionately impacted by higher energy bills.

I-937 DOES NOT TREAT LOW-COST HYDROPOWER AS "RENEWABLE ENERGY" WHILE OTHER STATES DO.

I-937 will cause low-cost hydropower to be sold to California while local utilities buy higher cost alternative energy for our homes and businesses.

FINES ON UTILITIES FOR NOT HAVING ENOUGH "RENEWABLE ENERGY" WILL BE PAID BY HOMES AND BUSINESSES.

Mandates and fines proposed by I-937 are not the way to promote alternative energy. We are paying too much for our energy bills now.

ALTERNATIVE ENERGY PROJECTS ONLY OPERATE SPORADICALLY AND MANY COMMUNITIES WON'T ALLOW THEM.

Wind and sunshine are irregular energy sources. Hydropower or thermal plants are needed to supply steady power for homes and businesses. But hydropower resources are being cut to protect fish and may not be available to supplement alternative energy.

I-937 does not require utilities to build alternative energy projects in Washington. Kittitas and Benton counties have rejected wind power proposals due to public opposition. Other states may financially benefit from these mandated projects, while we pay the cost.

Vote No and visit www.NOonI-937.com .

Rebuttal of Statement For

Puget Sound Energy and other utilities are already building wind projects, but only when they make economic sense. I-937 will make non-hydropower renewable energy even more expensive. The Northwest Power and Conservation Council reports the cost of new wind projects has "risen substantially," because of mandates in other states.

There is nothing affordable about I-937. $185 to $370 million per year in additional energy costs to our households and businesses is too much. Vote no.

Voters' Pamphlet Argument Prepared by:

DON BRUNELL, President, Association of Washington Business; KRISTINE M. MIKKELSEN, CEO, Inland Power and Light Company; LINDA LANHAM, Aerospace Futures Alliance of Washington; ROBERT HEMSLEY, former G.A. representative, Western Pulp/Paper Workers Association; DARRYLL OLSEN, Ph.D., board representative, Columbia Snake River Irrigators Association; JUDY COOVERT, small business co-owner, Printcom, Inc.

Complete Text of

INITIATIVE MEASURE NO. 933

(continued)

immediate threat to human health and safety;

(ii) Requiring compliance with structural standards for buildings in building or fire codes to prevent harm from earthquakes, flooding, fire, or other natural disasters;

(iii) Limiting the location or operation of sex offender housing or adult entertainment;

(iv) Requiring adherence to chemical use restrictions that have been adopted by the United States environmental protection agency;

(v) Requiring compliance with worker health and safety laws or regulations;

(vi) Requiring compliance with wage and hour laws;

(vii) Requiring compliance with dairy nutrient management restrictions or regulations in chapter 90.64 RCW; or

(viii) Requiring compliance with local ordinances establishing setbacks from property lines, provided the setbacks were established prior to January 1, 1996.

This subsection (2)(c) shall be construed narrowly to effectuate the purposes of this act.

(d) "Compensation" means remuneration equal to the amount the fair market value of the affected property has been decreased by the application or enforcement of the ordinance, regulation, or rule. To the extent any action requires any portion of property to be left in its natural state or without beneficial use by its owner, "compensation" means the fair market value of that portion of property required to be left in its natural state or without beneficial use. "Compensation" also includes any costs and attorneys' fees reasonably incurred by the property owner in seeking to enforce this act.

FAIRNESS WHEN GOVERNMENT DIRECTLY REGULATES PRIVATE PROPERTY

NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW to read as follows:

An agency that decides to enforce or apply any ordinance, regulation, or rule to private property that would result in damaging the use or value of private property shall first pay the property owner compensation as defined in section 2 of this act. This section shall not be construed to limit agencies' ability to waive, or issue variances from, other legal requirements. An agency that chooses not to take action which will damage the use or value of private property is not liable for paying remuneration under this section.

NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW to read as follows:

An agency may not charge any fee for considering whether to waive or grant a variance from an ordinance, regulation, or rule in order to avoid responsibility for paying compensation as provided in section 3 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW to read as follows:

Development regulations adopted under this chapter shall not prohibit uses legally existing on any parcel prior to their adoption. Nothing in this chapter shall be construed to authorize an interference with the duties in chapter 64.40 RCW.

MISCELLANEOUS

NEW SECTION. **Sec. 6.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purpose of this act to protect private property owners.

NEW SECTION. **Sec. 7.** Nothing in this act shall diminish any other remedy provided under the United States Constitution or state Constitution, or federal or state law, and this act is not intended to modify or replace any such remedy.

NEW SECTION. **Sec. 8.** Subheadings used in this act are not any part of the law.

NEW SECTION. **Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 10.** This act shall be known as the property fairness act.

Complete Text of

INITIATIVE MEASURE NO. 937

AN ACT Relating to requirements for new energy resources; adding a new chapter to Title 19 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** INTENT. This chapter concerns requirements for new energy resources. This chapter requires large utilities to obtain fifteen percent of their electricity from new renewable resources such as solar and wind by 2020 and undertake cost-effective energy conservation.

NEW SECTION. **Sec. 2.** DECLARATION OF POLICY. Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

(3) "Commission" means the Washington state utilities and transportation commission.

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

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

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

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

(8) "Department" means the department of community, trade, and economic development or its successor.

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

(10) "Eligible renewable resource" means:

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

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(11) "Investor owned utility" has the same meaning as defined in RCW 19.29A.010.

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

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

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

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

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

(17) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(18) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after the effective date of this section; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

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

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

NEW SECTION. **Sec. 4.** ENERGY CONSERVATION AND RENEWABLE ENERGY TARGETS. (1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

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

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in

load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

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

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

(2)(a) Each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 5.** RESOURCE COSTS. (1)(a) A qualifying utility shall be considered in compliance with an annual target created in section 4(2) of this act for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.

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

(2) A qualifying utility that does not meet an annual renewable energy target established in section 4(2) of this act is exempt from

the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for all other qualifying utilities determines that the utility complied with section 4(2) (d) or (i) or 5(1) of this act.

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

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

(5) Administrative penalties collected under this chapter shall be deposited into the energy independence act special account which is hereby created. All receipts from administrative penalties collected under this chapter must be deposited into the account. Expenditures from the account may be used only for the purchase of renewable energy credits or for energy conservation projects at public facilities, local government facilities, community colleges, or state universities. The state shall own and retire any renewable energy credits purchased using moneys from the account. Only the director of general administration or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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

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

NEW SECTION. **Sec. 7.** REPORTING AND PUBLIC DISCLOSURE. (1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in section 4 of this act, including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. For each year that a qualifying utility elects to demonstrate alternative compliance under section 4(2) (d) or (i) or 5(1) of this act, it must include in its annual report relevant data to demonstrate that it met the criteria in that section. A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter 19.29A RCW.

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and all other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor.

(3) A qualifying utility shall also make reports required in this section available to its customers.

NEW SECTION. **Sec. 8.** RULE MAKING. (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under section 4(1) of this act; a qualifying utility's decision to pursue alternative compliance in section 4(2) (d) or (i) or 5(1) of this act; and the format and content of reports required in section 7 of this act. Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

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

(4) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by December 31, 2007. These rules may be revised as needed to carry out the intent and purposes of this chapter.

NEW SECTION. **Sec. 9.** CONSTRUCTION. The provisions of this chapter are to be liberally construed to effectuate the intent, policies, and purposes of this chapter.

NEW SECTION. **Sec. 10.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 11.** SHORT TITLE. This chapter may be known and cited as the energy independence act.

NEW SECTION. **Sec. 12.** CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act constitute a new chapter in Title 19 RCW.