



Washington State's New Clean Energy Legislation Has Far Reaching Impacts

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Washington State recently passed an ambitious series of clean energy legislation that will affect both businesses and individuals in unprecedented ways. The legislation provides for a rapid transition to zero-emitting electricity generation, establishment of conservation standards for energy use in new buildings, new efficiency standards for appliances, and a phase-out of hydrofluorocarbons used as refrigerants.

Our environmental attorneys have summarized the key impacts of the new legislation contained in the five bills listed below:

- [100% Clean Energy Act](#), ESSB 5116
- [Building Energy Efficiency Act](#), E3SHB 1257
- [Appliance Efficiency Standards Act](#), 2SHB 1444
- [Distributed Energy Planning Act](#), HB 1126
- [The Hydrofluorocarbons Reduction Act](#), ESSHB 1112

[The 100% Clean Energy Act](#), Chapter 288, Laws of 2019, became effective May 7, 2019. This new law mandates substantial structural changes in the way state utilities must do business. With its enactment, Washington became the fifth state in the nation to adopt a 100 percent clean energy mandate. The Legislature found that: *"Washington must address the impacts of climate change by leading the transition to a clean energy economy . . . by transforming its energy supply, modernizing its electricity system, and ensuring that the benefits of this transition are broadly shared throughout the state."*

Over the next 25 years, electric utilities will be required to meet a set of standards that ratchet down carbon dioxide emissions in 2025, 2030 and 2045.

The 2025 standard requires that all coal-fired resources, which currently supply 14 percent of Washington's electricity, be eliminated.

By 2045, each electric utility must fully decarbonize—meaning that 100 percent of all sales of electricity to Washington retail customers must be generated from a combination of non-emitting electric generation and from renewable resources. "Renewable resource" is defined as water, wind, solar energy, geothermal energy, renewable natural gas, renewable hydrogen, wave, ocean, or tidal power, biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests, or biomass energy. "Non-emitting electric generation" means *"electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation."*

Starting in 2030, the standard for all retail sales of electricity to Washington retail electric consumers will be "greenhouse gas neutral" with 4-year compliance periods through 2044. The 2030 standard requires that 80 percent of all retail sales of electricity to Washington customers must meet the 2045 full decarbonization standard. The remaining 20 percent may be satisfied through any combination of:

Washington State's 100% Clean Energy Law joins:

- California's [SB 100](#) sets 100 percent carbon-free electricity by 2045;
- Hawaii's [Clean Energy Initiative](#) requires a 100 percent renewable portfolio standard by the year 2045;
- Nevada's [SB 358](#) requires production of carbon-free electricity by 2050 to meet all of the state's needs and to get half its electricity from non-emitting sources by 2030;
- New Mexico's [SB 489](#) commits the state to achieving zero-carbon electricity from public utilities by 2045; and
- At this time, 131 cities and counties that have committed to getting all their electricity from non-polluting and renewable resources.

- paying an alternative compliance payment in the amount of \$100 times the following multipliers for each megawatt-hour of electrical generation used to meet load that is not from a renewable resource or non-emitting electrical generation: 1.5 for coal-fired resources; 0.84 for gas-fired peaking power plants; and 0.60 for gas-fired combined-cycle power plants;
- purchasing renewable energy credits;
- investing in energy transformation projects; or
- using electricity from an energy recovery facility using municipal solid waste as the principal fuel source.

The energy transformation project (“ETPs”) option presents interesting opportunities for innovation and investment. Examples include home weatherization, support for electrification of the transportation sector, investments in distributed energy resources and grid modernization, investments in renewable natural gas processes, contributions to self-directed investments in measure to serve site of large industrial gas and electrical customers, and energy efficiency in the agricultural sector.

The statute also identifies several qualifying criteria for an ETP, including that the project must be “permanent,” “verifiable,” “real, specific, identifiable and quantifiable,” “enforceable,” “not required,” and “not reasonably assumed to occur absent investment.” It will fall to the Department of Ecology, in consultation with the Department of Commerce and the Washington Utilities and Transportation Commission, to give further definition to these criteria when it develops implementing rules for the statute.

Hydroelectric Utility Exceptions. Utilities with hydroelectric facilities should be aware that not all hydroelectric generation qualifies for compliance with the new standards. Generation used by an electrical utility to meet the 2030 standard “*may not include new diversions, new impoundments, new bypass reaches, or expansion of existing reservoirs . . . unless the diversion, bypass reaches, or reservoir expansions are necessary for the operation of a pumped storage facility that: (i) does not conflict with existing state or federal fish recovery plans; and (ii) complies with all local, state, and federal laws and regulations.*”

There are opportunities for utilities and other interested parties to participate in the regulatory implementation of ESSB 5116 by providing input to the Departments of Commerce and Ecology, and the Washington Utilities and Transportation Commission, through several work groups, committees, and public processes.

The Building Energy Efficiency Act, Chapter 285, Laws of 2019, becomes effective on July 28, 2019. This new law seeks “*to maximize reductions in greenhouse gas (GHG) emissions from the building sector*” through increases in energy efficiency and the use of renewable fuels for most types of commercial buildings. Under the new law:

- The State Building Code Council will develop rules for electrical vehicle charging capability in all new buildings that provide on-site parking.
- The Department of Commerce will establish a state energy performance standard for covered commercial buildings by November 1, 2020 and an early adoption incentive program.
- A utility tax credit is established.
- Each gas company must identify and acquire conservation measures that are available and cost-effective, establish an acquisition target every two years, and demonstrate that the target will result in the acquisition of all resources identified as available and cost-effective. A gas company may propose a renewable natural gas program under which the company would supply renewable natural gas for a portion of the natural gas sold or delivered to its retail customers. Each gas company must offer, by tariff, a voluntary renewable natural gas service available to all customers to replace any portion of natural gas that would otherwise be provided by the gas company. “Renewable natural gas” is defined as a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

The Appliance Efficiency Standards Law, Chapter 286, Laws of 2019, takes effect on July 28, 2019. As a means to reduce GHG emissions, this new law modifies existing state appliance efficiency and

testing standards. It establishes new minimum efficiency and testing standards for a variety of appliances such as commercial fryers, computer monitors, showerheads and water coolers. It also establishes design requirements for electric storage water heaters, and authorizes the Department of Commerce to adopt rules that incorporate, by reference, federal efficiency standards for federally covered products only as the standards existed on January 1, 2018. Federal preemption of certain existing standards is addressed, as well as establishing a reporting process for future federal preemption.

The Distributed Energy Planning Act, Chapter 205, Laws of 2019, is effective on July 28, 2019.

Distributed energy is produced through variety of technologies that generate electricity at or near where it will be used. Distributed energy resources address a range of power industry challenges including efficiency, reliability, power quality, and load balancing. On-site power facilities, energy storage, renewable generation, and microgrids are examples of distributed energy strategies.

This new law establishes a state policy that a distributed energy resources planning process, engaged in by electrical utilities, should accomplish the following:

- Identify the data gaps that impede a robust planning process as well as any upgrades;
- propose monitoring, control, and metering upgrades;
- identify potential programs and tariffs to fairly compensate customers for the value of their distributed energy resources;
- forecast the growth of distributed energy resources on the utility's distribution system;
- provide, at a minimum, a ten-year plan for distribution system investments and an analysis of non-wire alternatives for major transmission and distribution investments;
- include the distributed energy resources in the plan in the utility's integrated resource plan; and
- include a discussion of cybersecurity and data privacy practices.

By January 1, 2023, the Legislature will conduct an initial review of the state's policy pertaining to distributed energy resources planning.

The Hydrofluorocarbons Reduction Act, Chapter 284, Laws of 2019, takes effect on July 28,

2019. Hydrofluorocarbons (HFCs) are a category of compounds used primarily as refrigerants in a variety of commercial and industrial applications. HFCs with higher Global Warming Potential (GWP) are among the most potent GHGs. As the Legislature found, HFCs came into widespread commercial use as the United States Environmental Protection Agency (EPA) approved replacements for ozone-depleting substances that were being phased out under international agreement. Substituting or reducing the use of HFCs with the highest GWP will provide a significant boost to the state's efforts to reduce its GHG emissions to the limits established in [RCW 70.235.020](#).

Under this Act, the Department of Ecology must complete a report addressing how to: (1) increase the use of refrigerants with a low GWP in mobile sources, utility equipment, and consumer appliances; and (2) reduce other uses of HFCs. The Department of Enterprise Services must establish purchasing and procurement policies that provide a preference for products that will advance the support of non-GHG emitting substitutes for HFCs.

For more information

Van Ness Feldman continues to monitor new developments from the Washington State Legislature. Should you have any questions on how these new bills may affect your business, please contact [T.C. Richmond](#) at ter@vnf.com or [Erin Anderson](mailto:eanderson@vnf.com) at eanderson@vnf.com.

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