

SHB 2176 - H AMD 766

By Representative Morris

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature to
4 provide mechanisms for low-cost financing of energy systems on the
5 distribution side of the electricity grid, to provide for consumer
6 protection of customers of these systems, and to recognize electric
7 utility efforts in being early adopters of programs that encourage
8 energy independence by customers.

9 (2) The legislature finds that access to distributed renewable
10 energy systems installed on residential, commercial, and governmental
11 real property facilitates energy independence by consumers. The
12 ability to lease systems from third parties who finance upfront costs
13 provides further opportunities for consumers to access the benefits of
14 distributed renewable energy systems.

15 (3) The legislature finds that many electric utilities are the most
16 suitable and responsible entities to ensure the safety and reliability
17 of leased systems and to provide for consumer protection with respect
18 to those systems. However, due to the diversity of electric utilities
19 operating in Washington, the capacity of electric utilities to fulfill
20 these additional responsibilities varies. Therefore, the legislature
21 intends to afford electric utilities the discretion to fulfill these
22 responsibilities. Where utilities choose not to do so, the legislature
23 recognizes the importance of taking steps to ensure public safety and
24 consumer protection by conferring these responsibilities to the
25 Washington utilities and transportation commission.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires otherwise.

28 (1)(a) "Biomass energy" includes: (i) Organic by-products of
29 pulping and the wood manufacturing process; (ii) animal manure; (iii)

1 solid organic fuels from wood; (iv) forest or field residues; (v)
2 untreated wooden demolition or construction debris; (vi) food waste and
3 food processing residuals; (vii) liquors derived from algae; (viii)
4 dedicated energy crops; and (ix) yard waste.

5 (b) "Biomass energy" does not include: (i) Wood pieces that have
6 been treated with chemical preservatives such as creosote,
7 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth
8 forests; or (iii) municipal solid waste.

9 (2) "Electric utility" means a consumer-owned utility or investor-
10 owned utility as those terms are defined in RCW 19.280.020.

11 (3) "High efficiency cogeneration" means the sequential production
12 of electricity and useful thermal energy from a common fuel source,
13 where, under normal operating conditions, the facility has a useful
14 thermal energy output of no less than seventy-two percent of the total
15 energy output.

16 (4) "Leased energy system" means a renewable energy system that is:

17 (a) Located in Washington;

18 (b) Installed on an individual's, business's, or local government's
19 real property that is not leased and is provided electricity generated
20 by an electric utility; and

21 (c) Owned by:

22 (i) An electric utility and leased to a customer; or

23 (ii) A third-party vendor that has contracted with a customer of an
24 electric utility to lease a renewable energy system.

25 (5) "Renewable energy system" is a system that generates
26 electricity from: (a) Water; (b) wind; (c) solar energy; (d)
27 geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power;
28 (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined
29 in RCW 82.29A.135 that is not derived from crops raised on land cleared
30 from old growth or first-growth forests where the clearing occurred
31 after December 7, 2006; (i) biomass energy; or (j) high efficiency
32 cogeneration.

33 (6) "Third-party vendor" means an entity that seeks to lease and
34 install renewable energy systems to electric utility customers. An
35 electric utility offering a leased energy program may not be considered
36 a third-party vendor.

1 NEW SECTION. **Sec. 3.** (1) An electric utility may offer a leased
2 energy program. The leased energy program must offer to customers
3 across all rate classes the opportunity to lease from the electric
4 utility a renewable energy system with the nameplate electrical
5 generating capacity of no more than twenty-five kilowatts that will be
6 installed on the customer's property.

7 (2) If an electric utility offers a leased energy program, no other
8 entity may offer leases to the utility's customers.

9 (3) If an electric utility does not offer a leased energy program
10 that provides customers across all rate classes access to renewable
11 energy systems with the nameplate electrical generating capacity of no
12 more than twenty-five kilowatts on their property, third-party vendors
13 may offer these systems through leases to the electric utility's
14 customers.

15 (4)(a) If an electric utility intends to offer a leased energy
16 program, it must hold at least one public meeting to establish
17 reasonable goals in the implementation plan for the utility leased
18 energy program, publish a leased energy program implementation plan,
19 and implement the program by December 31, 2015.

20 (b) Goals for a utility leased energy program must include, but are
21 not limited to:

22 (i) The number of renewable energy systems interconnected annually
23 and during the life of the program;

24 (ii) The amount of kilowatt-hours installed annually and during the
25 life of the program; and

26 (iii) The appropriate participation in the program by a wide range
27 of participants based on income levels.

28 NEW SECTION. **Sec. 4.** (1) An electric utility that offers a
29 utility program as provided in section 3 of this act shall maintain a
30 registry of qualified contractors operating in the electric utility's
31 service area that are licensed to install renewable energy systems.
32 The electric utility shall provide the names and contact information
33 for the qualified contractors listed in the registry to customers who
34 have indicated an interest in the utility program, in order to assist
35 customers in identifying available renewable energy system installment
36 services.

1 (2) In the case of a consumer-owned utility that is subject to
2 chapters 54.04 and 39.04 RCW, the consumer-owned utility must follow
3 applicable laws governing procurement and public works.

4 (3) In the case of an investor-owned utility, the investor-owned
5 utility shall conduct an open and transparent process to facilitate
6 participation by qualified contractors.

7 NEW SECTION. **Sec. 5.** Electric utilities and third-party vendors
8 are encouraged to offer to customers the option to purchase the
9 renewable energy system at the end of the lease term.

10 NEW SECTION. **Sec. 6.** (1)(a) In the event that a real property
11 subject to a renewable energy system lease is sold, the remainder of
12 the lease must be assumed by the buyer if a memorandum has been
13 recorded reflecting the essential terms of the lease, unless the seller
14 and buyer agree otherwise. The transfer of ownership of a property
15 with a lease does not trigger any recertification of a system
16 previously certified for incentives under chapter 82.16 RCW. If the
17 buyer of such a property assumes a lease previously certified for these
18 incentives and authorized by a utility, the buyer continues to qualify
19 for all applicable incentives as originally certified under chapter
20 82.16 RCW, any other benefits of the lease and utility authorization.

21 (b) Thirty days prior to closing, the seller of property subject to
22 a lease shall notify any utility and third-party vendor affected by the
23 lease whether the buyer will assume the lease. Within seven days of
24 the seller's notice, the utility and third-party vendor shall provide
25 the documentation necessary for assumption of the lease by the buyer or
26 the procedures for termination of the lease and removal of the system.
27 The utility and third-party vendor shall remove the renewable energy
28 system from a property within twenty-one days of a written request of
29 the property owner.

30 (c) At the end of the lease term or earlier termination of a lease,
31 the utility or third-party vendor is responsible for the removal of the
32 leased energy system from the property and recover the cost thereof as
33 specified in the lease and noted in the recorded memorandum. There are
34 no damages for the premature termination of a lease unless the amount
35 of the damages are specified as liquidated damages in the lease.

1 (d) Renewable energy system leases may not grant utilities or
2 third-party vendors any authority to approve or disapprove the transfer
3 of real property associated with such a lease.

4 (2) The lessor of a renewable energy system shall guarantee
5 sufficient funds to properly dispose of the system at the end of the
6 lease. The lessor is responsible for identifying hazardous and
7 commercial valuable materials contained in the leased energy system and
8 how those materials will be properly disposed of or reclaimed. The
9 lessor must provide this information to the utilities and
10 transportation commission upon request of the commission.

11 NEW SECTION. **Sec. 7.** (1) The utilities and transportation
12 commission shall publish, without disclosing proprietary information,
13 a list of financing models being offered by investor-owned utilities or
14 third-party vendors registered as competitive electrical companies.

15 (2) If a consumer-owned utility opts to provide a leased energy
16 program or contracts with a third-party vendor to offer a leased energy
17 program, the governing board of a consumer-owned utility shall publish,
18 without disclosing proprietary information, a list of financing models
19 being offered by the utility or third-party vendor or vendors
20 contracted by the utility as part of a utility program.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.28 RCW
22 to read as follows:

23 (1) The legislature finds that:

24 (a) Third-party vendors of distributed renewable energy systems are
25 electrical companies as defined in this title and are subject to the
26 jurisdiction of the commission.

27 (b) A competitive marketplace with effective competition exists for
28 the provision of leasing and installation of distributed renewable
29 energy systems in the state of Washington.

30 (c) Traditional rate of return, rate based regulation of electrical
31 companies providing leasing and installation of distributed renewable
32 energy systems may not provide the most efficient and effective means
33 of achieving the public policy goals of this state as declared in RCW
34 80.28.024, 80.28.074, and this section. The commission is authorized
35 to employ an alternative form of regulation if that alternative is
36 better suited to achieving those policy goals.

1 (d) The commission retains its authority to protect consumers of
2 distributed renewable energy systems from deceptive practices. Nothing
3 in this act precludes the office of the attorney general from
4 exercising its statutory authority concerning consumer protection.

5 (2) For the purposes of this section, "renewable energy system" has
6 the same meaning as defined in section 2 of this act.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.28 RCW
8 to read as follows:

9 (1) A third-party vendor must register with the commission as a
10 competitive electrical company before beginning operations in this
11 state to lease and install distributed renewable energy systems. The
12 registration must be on a form prescribed by the commission and contain
13 that information as the commission may by rule require, but must
14 include at a minimum: The name and address of the company; the name
15 and address of the company's registered agent, if any; the name,
16 address, and title of each officer or director; the company's most
17 current balance sheet; the company's latest annual report, if any; a
18 description of the services the company offers or intends to offer; and
19 disclosure of any pending litigation against it. Third-party vendor
20 registration with the commission must occur on an annual basis.

21 (2) As a precondition to registration, the commission may require
22 the procurement of a performance bond sufficient to cover any advances
23 or deposits the competitive electrical company may collect from its
24 customers or order that the advances or deposits be held in escrow or
25 trust.

26 (3) The commission may deny registration to any company that:

27 (a) Does not provide the information required by this section;

28 (b) Fails to provide a performance bond, if required;

29 (c) Does not possess adequate financial resources to provide the
30 proposed service; or

31 (d) Does not possess adequate technical competency to provide the
32 proposed service.

33 (4) The commission shall take action to approve or issue a notice
34 of hearing concerning any application for registration within thirty
35 days after receiving the application. The commission may approve an
36 application with or without a hearing. The commission may deny an
37 application after a hearing.

1 (5) The commission shall adopt rules that describe the manner by
2 which it will regulate competitive electrical companies, as well as the
3 process for considering applications for registration under this title.
4 The rules must at a minimum provide for the protection of consumers of
5 renewable energy systems.

6 (6) For the purposes of this section, "renewable energy system" has
7 the same meaning as defined in section 2 of this act.

8 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.28 RCW
9 to read as follows:

10 (1) Competitive electrical companies must be subject to minimal
11 regulation. A competitive electrical company shall at a minimum:

12 (a) Keep its accounts according to rules as determined by the
13 commission;

14 (b) File financial reports with the commission as required by the
15 commission and in a form and at times prescribed by the commission;

16 (c) Post its prices on a public web site available to all potential
17 customers;

18 (d) Cooperate with commission investigations of customer
19 complaints; and

20 (e) At the request of the commission, provide information about the
21 materials contained in a leased energy system, including all hazardous
22 wastes and commercially valuable materials used in the system.

23 (2) The commission may revoke any waivers it grants and may
24 reclassify any competitive electrical company if the revocation or
25 reclassification would protect the public interest.

26 (3) The commission may waive the requirements of RCW 80.28.090 in
27 whole or in part for a competitive electrical company if it finds that
28 competition will serve the same purpose and protect the public
29 interest.

30 (4) Competitive electrical companies shall pay regulatory fees to
31 the commission under chapter 80.24 RCW.

32 (5) During a state of emergency declared under RCW 43.06.010(12),
33 the governor may waive or suspend the operation or enforcement of this
34 section or any portion of this section or under any administrative rule
35 and issue any orders to facilitate the operation of state or local
36 government or to promote and secure the safety and protection of the
37 civilian population.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 80.28 RCW
2 to read as follows:

3 (1) Upon request of the commission, investor-owned utilities and
4 third-party vendors offering leased energy systems must provide
5 information on the financial terms of leased energy systems currently
6 under contract. The commission shall use this information to determine
7 how each party to a lease energy system contract benefits financially.
8 In compliance with RCW 43.01.036, the commission shall report its
9 findings to the appropriate energy committees of the house of
10 representatives and senate by December 1, 2017.

11 (2) For the purposes of this section, "leased energy system" has
12 the same meaning as defined in section 2 of this act.

13 NEW SECTION. **Sec. 12.** Sections 1 through 7 of this act constitute
14 a new chapter in Title 19 RCW."

15 Correct the title.

EFFECT: The striking amendment makes the following changes, as
compared to Substitute House Bill 2176:

Leased Energy Programs Offered by Electric Utilities.

Specifies that an electric utility offering a leased energy program may not be considered a third-party vendor. Specifies that the electrical generating capacity of a renewable energy system offered by an electric utility in a leased energy program to be no more than 25 kilowatts. Removes the requirement that only leased energy systems that can store up to 20 percent of the maximum total system hourly output for four hours are eligible for net metering.

Requires electric utilities that have opted to offer a leased energy program to hold at least one public meeting to establish reasonable goals in the implementation plan of a leased energy program, publish the leased energy program implementation plan, and implement the program by December 31, 2015.

Requires electric utilities to maintain a registry of qualified contractors operating in the electric utility's service area that are licensed to install renewable energy systems. Requires investor-owned utilities to conduct an open and transparent process to facilitate participation by qualified contractors operating in the electric utility's service area that are licensed to install renewable energy systems.

Department of Ecology.

Requires competitive electrical companies to provide information at the request of the Commission about the materials contained in leased energy systems, including all hazardous wastes and commercially valuable materials used in the system. Removes the assessment conducted by the Department of Ecology of the environmental consequences associated with leased energy systems and energy storage systems. Removes a provision requiring the Department of Ecology to convene appropriate parties to develop recommendations on the responsible management of hazardous waste and the recovery of rare earth minerals and other commercially valuable materials contained in renewable energy systems at the end of a system's life.

Removes the requirement that the Department of Ecology report its recommendations to the Legislature.

Transfer of Property.

Includes provisions relating to the transfer of a renewable energy system lease in the event that the real property on which the system is placed is sold. Requires the lessor of a renewable energy system to guarantee sufficient funds to properly dispose of the system at the end of the lease, identify hazardous and commercially valuable materials contained in the leased energy system, and provide this information to the Utilities and Transportation Commission upon request of the Commission. Prohibits renewable energy system leases from granting utilities or third-party vendors authority to approve or disapprove the transfer of real property associated with the lease.

Third-party Vendor Registration.

Modifies the reporting requirement for third-party vendors to ensure a third-party vendor must register with the Utilities and Transportation Commission on an annual basis and must disclose any pending litigation against it.

UTC Rules.

Requires the rules adopted by the Utilities and Transportation Commission to, at a minimum, provide for the protection of consumers of renewable energy systems.

Competitive Electrical Companies.

Removes provisions that the Utilities and Transportation Commission may waive any regulatory requirement for competitive electrical companies when the Commission determines that competition will serve the same purposes as public interest regulation or if different regulatory treatment is in the public interest.

Intent Section.

Provides additional intent language that finds, among other things, that many electric utilities are the most suitable and responsible entities to ensure the safety and reliability of leased energy systems and to provide for consumer protection with respect to those systems.

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