

**ESSB 6658 - H AMD 1351**

By Representative McCoy

ADOPTED AS AMENDED 03/11/2010

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

3 "Sec. 1. RCW 82.16.110 and 2009 c 469 s 504 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Administrator" means an owner and assignee of a community  
8 solar project as defined in subsection (2)(a)(i) of this section that  
9 is responsible for applying for the investment cost recovery incentive  
10 on behalf of the other owners and performing such administrative tasks  
11 on behalf of the other owners as may be necessary, such as receiving  
12 investment cost recovery incentive payments, and allocating and paying  
13 appropriate amounts of such payments to the other owners.

14 (2)(a) "Community solar project" means:

15 (i) A solar energy system that is capable of generating up to  
16 seventy-five kilowatts of electricity and is owned by local  
17 individuals, households, nonprofit organizations, or nonutility  
18 businesses that is placed on the property owned by a cooperating local  
19 governmental entity that is not in the light and power business or in  
20 the gas distribution business; ((or))

21 (ii) A utility-owned solar energy system that is capable of  
22 generating up to seventy-five kilowatts of electricity and that is  
23 voluntarily funded by the utility's ratepayers where, in exchange for  
24 their financial support, the utility gives contributors a payment or  
25 credit on their utility bill for the value of the electricity produced  
26 by the project; or

27 (iii) A solar energy system, placed on the property owned by a  
28 cooperating local governmental entity that is not in the light and  
29 power business or in the gas distribution business, that is capable of  
30 generating up to seventy-five kilowatts of electricity, and that is

1 owned by a company whose members are each eligible for an investment  
2 cost recovery incentive for the same customer-generated electricity as  
3 provided in RCW 82.16.120.

4 (b) For the purposes of "community solar project" as defined in (a)  
5 of this subsection:

6 (i) "Company" means an entity that is:

7 (A)(I) A limited liability company;

8 (II) A cooperative formed under chapter 23.86 RCW; or

9 (III) A mutual corporation or association formed under chapter  
10 24.06 RCW; and

11 (B) Not a "utility" as defined in this subsection (2)(b); and

12 (ii) "Nonprofit organization" means an organization exempt from  
13 taxation under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal  
14 internal revenue code of 1986, as amended, as of January 1, 2009; and

15 ((+ii)) (iii) "Utility" means a light and power business, an  
16 electric cooperative, or a mutual corporation that provides electricity  
17 service.

18 ((+2)) (3) "Customer-generated electricity" means a community  
19 solar project or the alternating current electricity that is generated  
20 from a renewable energy system located in Washington and installed on  
21 an individual's, businesses', or local government's real property that  
22 is also provided electricity generated by a light and power business.  
23 Except for community solar projects, a system located on a leasehold  
24 interest does not qualify under this definition. Except for utility-  
25 owned community solar projects, "customer-generated electricity" does  
26 not include electricity generated by a light and power business with  
27 greater than one thousand megawatt hours of annual sales or a gas  
28 distribution business.

29 ((+3)) (4) "Economic development kilowatt-hour" means the actual  
30 kilowatt-hour measurement of customer-generated electricity multiplied  
31 by the appropriate economic development factor.

32 ((+4)) (5) "Local governmental entity" means any unit of local  
33 government of this state including, but not limited to, counties,  
34 cities, towns, municipal corporations, quasi-municipal corporations,  
35 special purpose districts, and school districts.

36 ((+5)) (6) "Photovoltaic cell" means a device that converts light  
37 directly into electricity without moving parts.

1 ((+6+)) (7) "Renewable energy system" means a solar energy system,  
2 an anaerobic digester as defined in RCW 82.08.900, or a wind generator  
3 used for producing electricity.

4 ((+7+)) (8) "Solar energy system" means any device or combination  
5 of devices or elements that rely upon direct sunlight as an energy  
6 source for use in the generation of electricity.

7 ((+8+)) (9) "Solar inverter" means the device used to convert  
8 direct current to alternating current in a photovoltaic cell system.

9 ((+9+)) (10) "Solar module" means the smallest nondivisible self-  
10 contained physical structure housing interconnected photovoltaic cells  
11 and providing a single direct current electrical output.

12 **Sec. 2.** RCW 82.16.120 and 2009 c 469 s 505 are each amended to  
13 read as follows:

14 (1)(a) Any individual, business, local governmental entity, not in  
15 the light and power business or in the gas distribution business, or a  
16 participant in a community solar project may apply to the light and  
17 power business serving the situs of the system, each fiscal year  
18 beginning on July 1, 2005, for an investment cost recovery incentive  
19 for each kilowatt-hour from a customer-generated electricity renewable  
20 energy system.

21 ~~((No incentive may be paid for kilowatt hours generated before July  
22 1, 2005, or after June 30, 2020.))~~

23 (b) In the case of a community solar project as defined in RCW  
24 82.16.110(2)(a)(i), the administrator must apply for the investment  
25 cost recovery incentive on behalf of each of the other owners.

26 (c) In the case of a community solar project as defined in RCW  
27 82.16.110(2)(a)(iii), the company owning the community solar project  
28 must apply for the investment cost recovery incentive on behalf of each  
29 member of the company.

30 (2)(a) Before submitting for the first time the application for the  
31 incentive allowed under subsection (4) of this section, the applicant  
32 must submit to the department of revenue and to the climate and rural  
33 energy development center at the Washington State University,  
34 established under RCW 28B.30.642, a certification in a form and manner  
35 prescribed by the department that includes, but is not limited to, the  
36 following information:

1 (i) The name and address of the applicant and location of the  
2 renewable energy system.

3 (A) If the applicant is an administrator of a community solar  
4 project as defined in RCW 82.16.110(2)(a)(i), the certification must  
5 also include the name and address of each of the owners of the  
6 community solar project.

7 (B) If the applicant is a company that owns a community solar  
8 project as defined in RCW 82.16.110(2)(a)(iii), the certification must  
9 also include the name and address of each member of the company;

10 (ii) The applicant's tax registration number;

11 (iii) That the electricity produced by the applicant meets the  
12 definition of "customer-generated electricity" and that the renewable  
13 energy system produces electricity with:

14 (A) Any solar inverters and solar modules manufactured in  
15 Washington state;

16 (B) A wind generator powered by blades manufactured in Washington  
17 state;

18 (C) A solar inverter manufactured in Washington state;

19 (D) A solar module manufactured in Washington state; or

20 (E) Solar or wind equipment manufactured outside of Washington  
21 state;

22 (iv) That the electricity can be transformed or transmitted for  
23 entry into or operation in parallel with electricity transmission and  
24 distribution systems; and

25 (v) The date that the renewable energy system received its final  
26 electrical permit from the applicable local jurisdiction.

27 (b) Within thirty days of receipt of the certification the  
28 department of revenue must notify the applicant by mail, or  
29 electronically as provided in RCW 82.32.135, whether the renewable  
30 energy system qualifies for an incentive under this section. The  
31 department may consult with the climate and rural energy development  
32 center to determine eligibility for the incentive. System  
33 certifications and the information contained therein are subject to  
34 disclosure under RCW 82.32.330(3)(m).

35 (3)(a) By August 1st of each year application for the incentive  
36 (~~shall~~) must be made to the light and power business serving the  
37 situs of the system by certification in a form and manner prescribed by

1 the department that includes, but is not limited to, the following  
2 information:

3 (i) The name and address of the applicant and location of the  
4 renewable energy system.

5 (A) If the applicant is an administrator of a community solar  
6 project as defined in RCW 82.16.110(2)(a)(i), the application must also  
7 include the name and address of each of the owners of the community  
8 solar project.

9 (B) If the applicant is a company that owns a community solar  
10 project as defined in RCW 82.16.110(2)(a)(iii), the application must  
11 also include the name and address of each member of the company;

12 (ii) The applicant's tax registration number;

13 (iii) The date of the notification from the department of revenue  
14 stating that the renewable energy system is eligible for the incentives  
15 under this section; and

16 (iv) A statement of the amount of kilowatt-hours generated by the  
17 renewable energy system in the prior fiscal year.

18 (b) Within sixty days of receipt of the incentive certification the  
19 light and power business serving the situs of the system (~~shall~~) must  
20 notify the applicant in writing whether the incentive payment will be  
21 authorized or denied. The business may consult with the climate and  
22 rural energy development center to determine eligibility for the  
23 incentive payment. Incentive certifications and the information  
24 contained therein are subject to disclosure under RCW 82.32.330(3)(m).

25 (c)(i) Persons, administrators of community solar projects, and  
26 companies receiving incentive payments (~~shall~~) must keep and  
27 preserve, for a period of five years, suitable records as may be  
28 necessary to determine the amount of incentive applied for and  
29 received. Such records (~~shall~~) must be open for examination at any  
30 time upon notice by the light and power business that made the payment  
31 or by the department. If upon examination of any records or from other  
32 information obtained by the business or department it appears that an  
33 incentive has been paid in an amount that exceeds the correct amount of  
34 incentive payable, the business may assess against the person for the  
35 amount found to have been paid in excess of the correct amount of  
36 incentive payable and (~~shall~~) must add thereto interest on the  
37 amount. Interest (~~shall be~~) is assessed in the manner that the  
38 department assesses interest upon delinquent tax under RCW 82.32.050.

1 (ii) If it appears that the amount of incentive paid is less than  
2 the correct amount of incentive payable the business may authorize  
3 additional payment.

4 (4) Except for community solar projects, the investment cost  
5 recovery incentive may be paid fifteen cents per economic development  
6 kilowatt-hour unless requests exceed the amount authorized for credit  
7 to the participating light and power business. For community solar  
8 projects, the investment cost recovery incentive may be paid thirty  
9 cents per economic development kilowatt-hour unless requests exceed the  
10 amount authorized for credit to the participating light and power  
11 business. For the purposes of this section, the rate paid for the  
12 investment cost recovery incentive may be multiplied by the following  
13 factors:

14 (a) For customer-generated electricity produced using solar modules  
15 manufactured in Washington state, two and four-tenths;

16 (b) For customer-generated electricity produced using a solar or a  
17 wind generator equipped with an inverter manufactured in Washington  
18 state, one and two-tenths;

19 (c) For customer-generated electricity produced using an anaerobic  
20 digester, or by other solar equipment or using a wind generator  
21 equipped with blades manufactured in Washington state, one; and

22 (d) For all other customer-generated electricity produced by wind,  
23 eight-tenths.

24 (5)(a) No individual, household, business, or local governmental  
25 entity is eligible for incentives provided under subsection (4) of this  
26 section for more than five thousand dollars per year.

27 (b) Except as provided in (c) through (e) of this subsection (5),  
28 each applicant in a community solar project is eligible for up to five  
29 thousand dollars per year.

30 (c) Where the applicant is an administrator of a community solar  
31 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible  
32 for an incentive but only in proportion to the ownership share of the  
33 project, up to five thousand dollars per year.

34 (d) Where the applicant is a company owning a community solar  
35 project that has applied for an investment cost recovery incentive on  
36 behalf of its members, each member of the company is eligible for an  
37 incentive that would otherwise belong to the company but only in

1 proportion to each ownership share of the company, up to five thousand  
2 dollars per year. The company itself is not eligible for incentives  
3 under this section.

4 (e) In the case of a utility-owned community solar project, each  
5 ratepayer that contributes to the project is eligible for an incentive  
6 in proportion to the contribution, up to five thousand dollars per  
7 year.

8 (6) If requests for the investment cost recovery incentive exceed  
9 the amount of funds available for credit to the participating light and  
10 power business, the incentive payments (~~shall~~) must be reduced  
11 proportionately.

12 (7) The climate and rural energy development center at Washington  
13 State University energy program may establish guidelines and standards  
14 for technologies that are identified as Washington manufactured and  
15 therefore most beneficial to the state's environment.

16 (8) The environmental attributes of the renewable energy system  
17 belong to the applicant, and do not transfer to the state or the light  
18 and power business upon receipt of the investment cost recovery  
19 incentive.

20 (9) No incentive may be paid under this section for kilowatt-hours  
21 generated before July 1, 2005, or after June 30, 2020.

22 **Sec. 3.** RCW 82.16.130 and 2009 c 469 s 506 are each amended to  
23 read as follows:

24 (1) A light and power business shall be allowed a credit against  
25 taxes due under this chapter in an amount equal to investment cost  
26 recovery incentive payments made in any fiscal year under RCW  
27 82.16.120. The credit shall be taken in a form and manner as required  
28 by the department. The credit under this section for the fiscal year  
29 may not exceed one percent of the businesses' taxable power sales due  
30 under RCW 82.16.020(1)(b) or one hundred thousand dollars, whichever is  
31 greater. Incentive payments to participants in a utility-owned  
32 community solar project as defined in RCW 82.16.110(~~(1)~~) (2)(a)(ii)  
33 may only account for up to twenty-five percent of the total allowable  
34 credit. Incentive payments to participants in a company-owned  
35 community solar project as defined in RCW 82.16.110(2)(a)(iii) may only  
36 account for up to five percent of the total allowable credit. The  
37 credit may not exceed the tax that would otherwise be due under this

1 chapter. Refunds shall not be granted in the place of credits.  
2 Expenditures not used to earn a credit in one fiscal year may not be  
3 used to earn a credit in subsequent years.

4 (2) For any business that has claimed credit for amounts that  
5 exceed the correct amount of the incentive payable under RCW 82.16.120,  
6 the amount of tax against which credit was claimed for the excess  
7 payments shall be immediately due and payable. The department shall  
8 assess interest but not penalties on the taxes against which the credit  
9 was claimed. Interest shall be assessed at the rate provided for  
10 delinquent excise taxes under chapter 82.32 RCW, retroactively to the  
11 date the credit was claimed, and shall accrue until the taxes against  
12 which the credit was claimed are repaid.

13 (3) The right to earn tax credits under this section expires June  
14 30, 2020. Credits may not be claimed after June 30, 2021.

15 **Sec. 4.** RCW 82.16.140 and 2005 c 300 s 5 are each amended to read  
16 as follows:

17 (1) Using existing sources of information, the department (~~shall~~)  
18 must report to the house appropriations committee, the house committee  
19 dealing with energy issues, the senate committee on ways and means, and  
20 the senate committee dealing with energy issues by December 1, (~~2009~~)  
21 2014. The report (~~shall~~) must measure the impacts of (~~chapter 300,~~  
22 ~~Laws of 2005~~) RCW 82.16.110 through 82.16.130, including the total  
23 number of solar energy system manufacturing companies in the state, any  
24 change in the number of solar energy system manufacturing companies in  
25 the state since July 1, 2005, and, where relevant, the effect on job  
26 creation, the number of jobs created for Washington residents, and such  
27 other factors as the department selects.

28 (2) The department (~~shall~~) may not conduct any new surveys to  
29 provide the report in subsection (1) of this section.

30 (3) For the purposes of this section, "company" has the same  
31 meaning as provided in RCW 82.04.030.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.16 RCW  
33 to read as follows:

34 Owners of a community solar project as defined in RCW  
35 82.16.110(2)(a) (i) and (iii) must agree to hold harmless the light and  
36 power business serving the situs of the system, including any employee,



1 for the good faith reliance on the information contained in an  
2 application or certification submitted by an administrator or company.  
3 In addition, the light and power business and any employee is immune  
4 from civil liability for the good faith reliance on any misstatement  
5 that may be made in such application or certification. Should a light  
6 and power business or employee prevail upon the defense provided in  
7 this section, it is entitled to recover expenses and reasonable  
8 attorneys' fees incurred in establishing the defense."

9 Correct the title.

EFFECT: Reduces the maximum electric generating capacity of a community solar project from 100 kilowatts to 75 kilowatts. Removes provision that allows community solar systems owned by limited liability companies that have received all required government permits and begins construction by December 31, 2010, to have an electric generating capacity higher than 100 kilowatts. Removes the definition for "limited liability company" and adds a definition for "company." Defines "company" to mean the following entities that are not a utility: (1) A limited liability company; (2) a cooperative association; or (3) a mutual corporation or association.

Specifies where the applicant is an administrator of a community solar project, each owner in a community solar project is eligible for an incentive payment in proportion to the ownership share of the project, up to five thousand dollars per year. Specifies where the applicant is a company owning a community solar project, each member of the company is eligible for an incentive payment in proportion to the ownership share of the project, up to five thousand dollars per year. Provides that the company itself is not eligible for an incentive payment. Specifies that in the case of a utility-owned community solar project, each rate payer that contributes to the project is eligible for an incentive payment in proportion to the ratepayer's contribution, up to five thousand dollars per year.

Provides that community solar project administrators and companies receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

Limits incentive payments to participants in company-owned community solar projects to up to five percent of the total allowable public utility tax credits allowed under the cost-recovery incentive payment program.

Requires the department of revenue to report the appropriate committees of the legislature by December 1, 2014, on various impacts of cost-recovery incentive payment program.

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