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**SUBSTITUTE SENATE BILL 6658**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Rockefeller, Morton, and Pridemore)

READ FIRST TIME 02/04/10.

1            AN ACT Relating to modifying community solar project provisions for  
2 investment cost recovery incentives; amending RCW 82.16.110 and  
3 82.16.120; and adding a new section to chapter 82.16 RCW.

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

5            **Sec. 1.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to  
6 read as follows:

7            The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

17            (i) A solar energy system that produces a maximum instantaneous  
18 power output of one hundred kilowatts of electricity and is owned by  
19 local individuals, households, nonprofit organizations, or nonutility

1 businesses that is placed on the property owned by a cooperating local  
2 governmental entity that is not in the light and power business or in  
3 the gas distribution business; ~~((or))~~

4 (ii) A utility-owned solar energy system that produces a maximum  
5 instantaneous power output of one hundred kilowatts of electricity and  
6 that is voluntarily funded by the utility's ratepayers where, in  
7 exchange for their financial support, the utility gives contributors a  
8 payment or credit on their utility bill for the value of the  
9 electricity produced by the project; or

10 (iii) A solar energy system that produces a maximum instantaneous  
11 power output of one hundred kilowatts of electricity and is owned by a  
12 limited liability company whose members are each eligible for an  
13 investment cost recovery incentive for the same customer-generated  
14 electricity as provided in RCW 82.16.120.

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

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

20 (ii) "Utility" means a light and power business, an electric  
21 cooperative, or a mutual corporation that provides electricity service.

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

33 ~~((+3))~~ (4) "Economic development kilowatt-hour" means the actual  
34 kilowatt-hour measurement of customer-generated electricity multiplied  
35 by the appropriate economic development factor.

36 ~~((+4))~~ (5) "Local governmental entity" means any unit of local  
37 government of this state including, but not limited to, counties,

1 cities, towns, municipal corporations, quasi-municipal corporations,  
2 special purpose districts, and school districts.

3 ~~((+5))~~ (6) "Photovoltaic cell" means a device that converts light  
4 directly into electricity without moving parts.

5 ~~((+6))~~ (7) "Renewable energy system" means a solar energy system,  
6 an anaerobic digester as defined in RCW 82.08.900, or a wind generator  
7 used for producing electricity.

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

11 ~~((+8))~~ (9) "Solar inverter" means the device used to convert  
12 direct current to alternating current in a photovoltaic cell system.

13 ~~((+9))~~ (10) "Solar module" means the smallest nondivisible self-  
14 contained physical structure housing interconnected photovoltaic cells  
15 and providing a single direct current electrical output.

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

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

25 ~~((No incentive may be paid for kilowatt hours generated before July  
26 1, 2005, or after June 30, 2020.))~~

27 (b) In the case of a community solar project as defined in RCW  
28 82.16.110(2)(a)(i), the administrator must apply for the investment  
29 cost recovery incentive on behalf of each of the other owners.

30 (c) In the case of a community solar project as defined in RCW  
31 82.16.110(2)(a)(iii), the limited liability company owning the  
32 community solar project must apply for the investment cost recovery  
33 incentive on behalf of each member of the limited liability company.

34 (2)(a) Before submitting for the first time the application for the  
35 incentive allowed under subsection (4) of this section, the applicant  
36 must submit to the department of revenue and to the climate and rural  
37 energy development center at the Washington State University,

1 established under RCW 28B.30.642, a certification in a form and manner  
2 prescribed by the department that includes, but is not limited to, the  
3 following information:

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

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

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

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

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

18 (A) Any solar inverters and solar modules manufactured in  
19 Washington state;

20 (B) A wind generator powered by blades manufactured in Washington  
21 state;

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

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

24 (E) Solar or wind equipment manufactured outside of Washington  
25 state;

26 (iv) That the electricity can be transformed or transmitted for  
27 entry into or operation in parallel with electricity transmission and  
28 distribution systems; and

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

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

1 (3)(a) By August 1st of each year application for the incentive  
2 (~~shall~~) must be made to the light and power business serving the  
3 situs of the system by certification in a form and manner prescribed by  
4 the department that includes, but is not limited to, the following  
5 information:

6 (i) The name and address of the applicant and location of the  
7 renewable energy system.

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

12 (B) If the applicant is a limited liability company that owns a  
13 community solar project as defined in RCW 82.16.110(2)(a)(iii), the  
14 application must also include the name and address of each member of  
15 the limited liability company;

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

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

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

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

29 (c)(i) Persons receiving incentive payments (~~shall~~) must keep and  
30 preserve, for a period of five years, suitable records as may be  
31 necessary to determine the amount of incentive applied for and  
32 received. Such records (~~shall~~) must be open for examination at any  
33 time upon notice by the light and power business that made the payment  
34 or by the department. If upon examination of any records or from other  
35 information obtained by the business or department it appears that an  
36 incentive has been paid in an amount that exceeds the correct amount of  
37 incentive payable, the business may assess against the person for the  
38 amount found to have been paid in excess of the correct amount of

1 incentive payable and (~~shall~~) must add thereto interest on the  
2 amount. Interest (~~shall be~~) is assessed in the manner that the  
3 department assesses interest upon delinquent tax under RCW 82.32.050.

4 (ii) If it appears that the amount of incentive paid is less than  
5 the correct amount of incentive payable the business may authorize  
6 additional payment.

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

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

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

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

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

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

30 (b) Except as provided in (c) and (d) of this subsection (5), each  
31 applicant in a community solar project is eligible for up to five  
32 thousand dollars per year.

33 (c) Where the applicant is an administrator of a community solar  
34 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible  
35 for an incentive up to five thousand dollars per year.

36 (d) Where the applicant is a limited liability company owning a  
37 community solar project that has applied for an investment cost  
38 recovery incentive on behalf of its members, each member of the limited

1 liability company is eligible for the incentive that would otherwise  
2 belong to the limited liability company, up to five thousand dollars  
3 per year, and the limited liability company is not eligible for  
4 incentives under this section.

5 (6) Owners in a community solar project are eligible to receive an  
6 investment cost recovery incentive based on the total customer-  
7 generated electricity produced by the project but only in proportion to  
8 each ownership share or, in the case of a utility-owned community solar  
9 project, in proportion to each ratepayer's contribution. No owner in  
10 a community solar project is eligible for incentives under this section  
11 for more than five thousand dollars.

12 (7) If requests for the investment cost recovery incentive exceed  
13 the amount of funds available for credit to the participating light and  
14 power business, the incentive payments (~~shall~~) must be reduced  
15 proportionately.

16 (~~(7)~~) (8) The climate and rural energy development center at  
17 Washington State University energy program may establish guidelines and  
18 standards for technologies that are identified as Washington  
19 manufactured and therefore most beneficial to the state's environment.

20 (~~(8)~~) (9) The environmental attributes of the renewable energy  
21 system belong to the applicant, and do not transfer to the state or the  
22 light and power business upon receipt of the investment cost recovery  
23 incentive.

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

26 NEW SECTION. Sec. 3. A new section is added to chapter 82.16 RCW  
27 to read as follows:

28 Owners of a community solar project as defined in RCW  
29 82.16.110(2)(a) (i) and (iii) must agree to hold harmless the light and  
30 power business serving the situs of the system, including any employee,  
31 for the good faith reliance on the information contained in an  
32 application or certification submitted by an administrator or limited  
33 liability company. In addition, the light and power business and any  
34 employee is immune from civil liability for the good faith reliance on  
35 any misstatement that may be made in such application or certification.  
36 Should a light and power business or employee prevail upon the defense

1 provided in this section, it is entitled to recover expenses and  
2 reasonable attorneys' fees incurred in establishing the defense.

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