

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6658

61st Legislature
2010 Regular Session

Passed by the Senate March 11, 2010
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 11, 2010
YEAS 96 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6658** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6658

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

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, 82.16.120,
3 82.16.130, and 82.16.140; and adding a new section to chapter 82.16
4 RCW.

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

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

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

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

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

18 (i) A solar energy system that is capable of generating up to
19 seventy-five kilowatts of electricity and is owned by local

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

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

11 (iii) A solar energy system, placed on the property owned by a
12 cooperating local governmental entity that is not in the light and
13 power business or in the gas distribution business, that is capable of
14 generating up to seventy-five kilowatts of electricity, and that is
15 owned by a company whose members are each eligible for an investment
16 cost recovery incentive for the same customer-generated electricity as
17 provided in RCW 82.16.120.

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

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

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

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

23 (III) A mutual corporation or association formed under chapter
24 24.06 RCW; and

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

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

29 ~~((+ii))~~ (iii) "Utility" means a light and power business, an
30 electric cooperative, or a mutual corporation that provides electricity
31 service.

32 ~~((+2))~~ (3) "Customer-generated electricity" means a community
33 solar project or the alternating current electricity that is generated
34 from a renewable energy system located in Washington and installed on
35 an individual's, businesses', or local government's real property that
36 is also provided electricity generated by a light and power business.
37 Except for community solar projects, a system located on a leasehold
38 interest does not qualify under this definition. Except for utility-

1 owned community solar projects, "customer-generated electricity" does
2 not include electricity generated by a light and power business with
3 greater than one thousand megawatt hours of annual sales or a gas
4 distribution business.

5 ((+3)) (4) "Economic development kilowatt-hour" means the actual
6 kilowatt-hour measurement of customer-generated electricity multiplied
7 by the appropriate economic development factor.

8 ((+4)) (5) "Local governmental entity" means any unit of local
9 government of this state including, but not limited to, counties,
10 cities, towns, municipal corporations, quasi-municipal corporations,
11 special purpose districts, and school districts.

12 ((+5)) (6) "Photovoltaic cell" means a device that converts light
13 directly into electricity without moving parts.

14 ((+6)) (7) "Renewable energy system" means a solar energy system,
15 an anaerobic digester as defined in RCW 82.08.900, or a wind generator
16 used for producing electricity.

17 ((+7)) (8) "Solar energy system" means any device or combination
18 of devices or elements that rely upon direct sunlight as an energy
19 source for use in the generation of electricity.

20 ((+8)) (9) "Solar inverter" means the device used to convert
21 direct current to alternating current in a photovoltaic cell system.

22 ((+9)) (10) "Solar module" means the smallest nondivisible self-
23 contained physical structure housing interconnected photovoltaic cells
24 and providing a single direct current electrical output.

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

27 (1)(a) Any individual, business, local governmental entity, not in
28 the light and power business or in the gas distribution business, or a
29 participant in a community solar project may apply to the light and
30 power business serving the situs of the system, each fiscal year
31 beginning on July 1, 2005, for an investment cost recovery incentive
32 for each kilowatt-hour from a customer-generated electricity renewable
33 energy system.

34 (~~No incentive may be paid for kilowatt hours generated before July~~
35 ~~1, 2005, or after June 30, 2020.~~)

36 (b) In the case of a community solar project as defined in RCW

1 82.16.110(2)(a)(i), the administrator must apply for the investment
2 cost recovery incentive on behalf of each of the other owners.

3 (c) In the case of a community solar project as defined in RCW
4 82.16.110(2)(a)(iii), the company owning the community solar project
5 must apply for the investment cost recovery incentive on behalf of each
6 member of the company.

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

14 (i) The name and address of the applicant and location of the
15 renewable energy system.

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

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

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

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

27 (A) Any solar inverters and solar modules manufactured in
28 Washington state;

29 (B) A wind generator powered by blades manufactured in Washington
30 state;

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

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

33 (E) Solar or wind equipment manufactured outside of Washington
34 state;

35 (iv) That the electricity can be transformed or transmitted for
36 entry into or operation in parallel with electricity transmission and
37 distribution systems; and

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

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

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

16 (i) The name and address of the applicant and location of the
17 renewable energy system.

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

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

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

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

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

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

1 (c)(i) Persons, administrators of community solar projects, and
2 companies receiving incentive payments (~~shall~~) must keep and
3 preserve, for a period of five years, suitable records as may be
4 necessary to determine the amount of incentive applied for and
5 received. Such records (~~shall~~) must be open for examination at any
6 time upon notice by the light and power business that made the payment
7 or by the department. If upon examination of any records or from other
8 information obtained by the business or department it appears that an
9 incentive has been paid in an amount that exceeds the correct amount of
10 incentive payable, the business may assess against the person for the
11 amount found to have been paid in excess of the correct amount of
12 incentive payable and (~~shall~~) must add thereto interest on the
13 amount. Interest (~~shall be~~) is assessed in the manner that the
14 department assesses interest upon delinquent tax under RCW 82.32.050.

15 (ii) If it appears that the amount of incentive paid is less than
16 the correct amount of incentive payable the business may authorize
17 additional payment.

18 (4) Except for community solar projects, the investment cost
19 recovery incentive may be paid fifteen cents per economic development
20 kilowatt-hour unless requests exceed the amount authorized for credit
21 to the participating light and power business. For community solar
22 projects, the investment cost recovery incentive may be paid thirty
23 cents per economic development kilowatt-hour unless requests exceed the
24 amount authorized for credit to the participating light and power
25 business. For the purposes of this section, the rate paid for the
26 investment cost recovery incentive may be multiplied by the following
27 factors:

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

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

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

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

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

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

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

11 **(d) Where the applicant is a company owning a community solar**
12 **project that has applied for an investment cost recovery incentive on**
13 **behalf of its members, each member of the company is eligible for an**
14 **incentive that would otherwise belong to the company but only in**
15 **proportion to each ownership share of the company, up to five thousand**
16 **dollars per year. The company itself is not eligible for incentives**
17 **under this section.**

18 **(e) In the case of a utility-owned community solar project, each**
19 **ratepayer that contributes to the project is eligible for an incentive**
20 **in proportion to the contribution, up to five thousand dollars per**
21 **year.**

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

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

30 (8) The environmental attributes of the renewable energy system
31 belong to the applicant, and do not transfer to the state or the light
32 and power business upon receipt of the investment cost recovery
33 incentive.

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

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

1 (1) A light and power business shall be allowed a credit against
2 taxes due under this chapter in an amount equal to investment cost
3 recovery incentive payments made in any fiscal year under RCW
4 82.16.120. The credit shall be taken in a form and manner as required
5 by the department. The credit under this section for the fiscal year
6 may not exceed ~~((one))~~ one-half percent of the businesses' taxable
7 power sales due under RCW 82.16.020(1)(b) or one hundred thousand
8 dollars, whichever is greater. Incentive payments to participants in
9 a utility-owned community solar project as defined in RCW
10 82.16.110~~((+1))~~ (2)(a)(ii) may only account for up to twenty-five
11 percent of the total allowable credit. Incentive payments to
12 participants in a company-owned community solar project as defined in
13 RCW 82.16.110(2)(a)(iii) may only account for up to five percent of the
14 total allowable credit. The credit may not exceed the tax that would
15 otherwise be due under this chapter. Refunds shall not be granted in
16 the place of credits. Expenditures not used to earn a credit in one
17 fiscal year may not be used to earn a credit in subsequent years.

18 (2) For any business that has claimed credit for amounts that
19 exceed the correct amount of the incentive payable under RCW 82.16.120,
20 the amount of tax against which credit was claimed for the excess
21 payments shall be immediately due and payable. The department shall
22 assess interest but not penalties on the taxes against which the credit
23 was claimed. Interest shall be assessed at the rate provided for
24 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
25 date the credit was claimed, and shall accrue until the taxes against
26 which the credit was claimed are repaid.

27 (3) The right to earn tax credits under this section expires June
28 30, 2020. Credits may not be claimed after June 30, 2021.

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

31 (1) Using existing sources of information, the department ~~((shall))~~
32 must report to the house appropriations committee, the house committee
33 dealing with energy issues, the senate committee on ways and means, and
34 the senate committee dealing with energy issues by December 1, ~~((2009))~~
35 2014. The report ~~((shall))~~ must measure the impacts of ~~((chapter 300,~~
36 ~~Laws of 2005))~~ RCW 82.16.110 through 82.16.130, including the total
37 number of solar energy system manufacturing companies in the state, any

1 change in the number of solar energy system manufacturing companies in
2 the state since July 1, 2005, and, where relevant, the effect on job
3 creation, the number of jobs created for Washington residents, and such
4 other factors as the department selects.

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

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

9 NEW SECTION. Sec. 5. A new section is added to chapter 82.16 RCW
10 to read as follows:

11 Owners of a community solar project as defined in RCW
12 82.16.110(2)(a) (i) and (iii) must agree to hold harmless the light and
13 power business serving the situs of the system, including any employee,
14 for the good faith reliance on the information contained in an
15 application or certification submitted by an administrator or company.
16 In addition, the light and power business and any employee is immune
17 from civil liability for the good faith reliance on any misstatement
18 that may be made in such application or certification. Should a light
19 and power business or employee prevail upon the defense provided in
20 this section, it is entitled to recover expenses and reasonable
21 attorneys' fees incurred in establishing the defense.

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