

HOUSE BILL REPORT

2E2SHB 1144

As Passed House:
January 30, 2012

Title: An act relating to renewable energy investment cost recovery program.

Brief Description: Concerning renewable energy investment cost recovery program.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives McCoy, Crouse, Eddy, Morris, Haler, Kelley, Liias, Jacks, Frockt and Hudgins).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/25/11, 2/9/11 [DPS];
Ways & Means: 2/24/11, 2/25/11 [DP2S(w/o sub TEC)].

Floor Activity:

Passed House: 3/3/11, 96-0.

Floor Activity:

Passed House: 1/30/12, 81-15.

Brief Summary of Second Engrossed Second Substitute Bill

- Expands the Renewable Energy Incentive Cost-Recovery Program (Cost-Recovery Incentive Program) to include hydrokinetic energy systems.
- Allows nonprofit housing organizations to host community solar projects.
- Provides the host of a community solar project the option to purchase the solar energy system after the expiration of the Cost-Recovery Incentive Program.
- Specifies no new Cost-Recovery Incentive Program applications may be approved for a light and power business once the public utility tax (PUT) credit capacity for the light and power business is reached.
- Adjusts the amount of incentive payments company-owned projects and utility-owned community solar projects may receive as part of the total allowable PUT credit available to a light and power business.
- Authorizes Washington State University to charge a fee to cover the cost of processing applications and related technical assistance to effectively administer the cost recovery program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives McCoy, Chair; Eddy, Vice Chair; Jacks, Vice Chair; Crouse, Ranking Minority Member; Short, Assistant Ranking Minority Member; Anderson, Billig, Carlyle, Dahlquist, Frockt, Haler, Harris, Hasegawa, Kelley, Kristiansen, Lias, McCune, Morris and Nealey.

Staff: Scott Richards (786-7156).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 24 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Cody and Ross.

Staff: Rick Peterson (786-7150).

Background:

Renewable Energy Cost-Recovery Incentive Program.

In 2005 the Legislature created a Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Incentive Program) to promote renewable energy systems located in Washington that produce electricity from solar, wind, or anaerobic digesters. An individual, business, or local government purchasing an eligible system may apply for an incentive payment from the electric utility serving the applicant. The incentive provides at least 15 cents for each kilowatt-hour of energy produced, with extra incentives for solar generating systems or wind generating systems that use certain components manufactured in Washington. Payments are capped at \$5,000 annually per applicant.

Community Solar Projects.

In 2009 the Legislature expanded the Cost-Recovery Incentive Program to include community solar projects. Community solar projects are defined as either: (1) a solar energy system owned by local individuals, households, or non-utility businesses that is placed on the property owned by their cooperating local government entity; (2) a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project; or (3) a company-owned solar energy system that is a limited liability company, a cooperative, or a mutual corporation or

association. Community solar projects are eligible to receive incentives of 30 cents for each kilowatt-hour of energy produced. Only community solar projects capable of generating up to 75 kilowatts of electricity may receive incentive payments. Payments to a community solar project are capped at \$5,000 annually per applicant.

Cost-Recovery Incentive Program Limits.

A utility providing incentive payments is allowed a credit against its public utility tax (PUT) for incentives paid, limited to \$100,000 or 0.5 percent of its taxable power sales, whichever is greater. If the amount of requests for incentive payments exceeds the amount of funds available for PUT credit to the utility, the incentive payments to applicants must be reduced proportionally. Incentive payments to participants in a utility-owned community solar project may only account for up to 25 percent of the total allowable credit. Incentive payments to participants in a company-owned community solar project may only account for up to 5 percent of the total allowable credit.

The Cost-Recovery Incentive Program expires June 30, 2020.

Hydrokinetic Energy Projects.

Hydrokinetic energy projects are projects that generate electricity from waves or directly from the flow of water in ocean currents, tides, or inland waterways. Developers of hydrokinetic energy projects must secure a license from the Federal Energy Regulatory Commission (FERC). The FERC has three licensing processes for long-term projects of 30 to 50 years. Developers interested in pursuing a short-term license to test new technologies may participate in a pilot project licensing process offered through the FERC.

Affordable Housing Program.

The Department of Commerce administers the Housing Assistance Program and the Affordable Housing Program. Both of these programs, commonly referred to as the Housing Trust Fund (HTF), provide loan and grant moneys to eligible organizations to provide housing for low-income and special needs populations. The HTF is available to fund acquisition, new construction, and rehabilitation of low-income housing units. The HTF is primarily funded through a combination of bond appropriations and HTF loan repayments appropriated in the state's capital budget.

Washington State Housing Finance Commission.

The Washington State Housing Finance Commission was created by the Legislature to assist in making affordable and decent housing available throughout the state. Federal law authorizes state housing finance agencies to issue tax-exempt revenue bonds to fund low-cost housing assistance.

Washington State University Energy Extension.

The Washington State University Energy Extension (Energy Extension) provides technical expertise to the Washington State Department of Revenue in certifying renewable energy systems that qualify for the Cost-Recovery Incentive Program. Additionally, the Energy Extension is responsible for establishing guidelines and standards for technologies that are identified as Washington manufactured under the Cost-Recovery Incentive Program.

Summary of Second Engrossed Second Substitute Bill:

Eligible to Host a Community Solar Project.

Nonprofit organizations and nonprofit housing organizations are eligible to host a community solar project.

A nonprofit housing organization is defined as an entity that is: (1) eligible for assistance under the State Affordable Housing Program; and (2) materially participating as a managing member of a limited liability company, general partner of a partnership, or as an equivalent organization for the purposes of accessing assistance from the Washington State Housing Finance Commission (Commission).

Renewable Energy Cost-Recovery Incentive Program Limits.

Incentive payments to participants in a utility-owned community solar project (utility-owned project) may only account for up to 15 percent of the total allowable credit. Incentive payments to participants in a company-owned project may only account for up to 15 percent of the total allowable credit. A utility-owned project and a company-owned project must share up to 30 percent of the total allowable public utility tax (PUT) credit, if these projects receive incentive payments from a light and power business providing electrical service solely within a county with a population between 39,000 and 43,500.

If requests for the investment Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Incentive Program) payments exceed the amount of funds available for credit to the participating light and power business, no new applications may be approved for the light and power business. Light and power businesses providing electrical service solely within a county with a population between 39,000 and 43,500 must reduce payments proportionally once request for the Cost-Recovery Incentive Program exceeds the amount of funds available for the PUT credit.

Incentive payments to participants in a community solar project owned by a limited liability company with a nonprofit housing organization participating as a managing member for the purposes of accessing assistance from the Commission may account for more than 15 percent of the total allowable PUT credit.

Option to Purchase Community Solar Project.

A local government entity that hosts a community solar project on its property has the option of purchasing the solar energy system from the owner at fair market value after the expiration of the Cost-Recovery Incentive Program. The fair market value must take into consideration the following: (1) the energy production from the solar energy system over its remaining useful life; (2) the cost of the lease for the property that the solar energy system is located; and (3) maintenance, insurance, and cost of removal of the solar energy system if the host facility decides not to renew the lease.

Washington State University.

The Washington State University may charge for services to cover the cost of processing applications and related technical assistance to effectively administer the Cost-Recovery Incentive Program. If the Washington State University charges for these activities, an applicant must submit a payment along with the initial application. Application charges may not exceed fair and reasonable costs associated with the necessary and effective oversight of the cost recovery program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Technology, Energy & Communications):

(In support) The Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Incentive Program) is a great incentive for the development of manufacturing in the state. However, one of the problems with the program has been its complexity. For example, when there are more than about 11 participants in a company-owned community solar project (company-owned project), federal securities laws start to arise, limiting the amount of investments that can occur under a company-owned project. The bill seeks to resolve this issue by allowing fewer members to invest and participate in a company-owned project. This is accomplished by increasing the annual incentive payment level from \$5,000 to \$25,000. The bill helps provide investment certainty for all investors who participate in the Cost-Recovery Incentive Program by limiting new entrants into the program once the allowable tax credit is met. Increasing the company-owned project's share of the allowable tax credit from 5 percent to 15 percent will allow more company-owned projects and their members to maximize the federal tax credit they may receive for their investment in these projects.

(In support with concerns) Several electric cooperatives are participating in community solar projects and others are interested in partnering with independent colleges and universities to create new community solar projects. The bill reduces utility-owned community solar projects (utility-owned projects) share of the allowable tax credit from 25 percent to 15 percent. It is not clear why this reduction is happening. The Cost-Recovery Incentive Program should be expanded a little further to allow nonprofit organizations, such as food banks, to qualify as a host of a community solar project. By allowing nonprofit food banks to locate community solar projects on their properties, a food bank can reduce its power consumption significantly and save money that can then be used to provide needed support to the community. The new multiplier for small wind energy systems is too high and would encourage develop of wind systems where wind resources are not sufficient. The requirement for the customers to reapply annually in order to receive the incentive is not necessary and adds an additional administrative burden for the participants. Utilities are able to monitor the production of renewable energy systems without the consumer having to reapply annually.

(With concerns) The City of Ellensburg has been an early adopter of solar, developing one of the first utility-owned projects under this program. The reduction of the utility-owned projects' share of the allowable tax credit from 25 percent to 15 percent decreases each participant's incentive payments significantly. There is concern about raising the annual incentive limit for company-owned projects to \$25,000 and not raising it for others. We recommend maintaining the same level of incentive for all participants in the Cost-Recovery Incentive Program. There is concern about the large incentive offer to small-scale wind systems. There are questions why such a large sum for small scale wind is needed. We recommend finding out how many utility-owned projects are in the works before reducing

the utility-owned projects' share of the total allowable credit cap. The wind energy system multiplier should be limited to just those manufactured in Washington. There are concerns about the first-come, first-serve provision that caps future entrants into the program. There may be groups that need more time to develop projects before they are shut out of the program.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill makes the Renewable Energy Cost-Recovery Incentive Program more efficient. The three fiscal impacts identified in the bill have been removed. The clarification of the definition of solar inverters is critical.

(Opposed) None.

Persons Testifying (Technology, Energy & Communications): (In support) Representative McCoy, prime sponsor; and Gary Shaver, Silicon Energy.

(In support with concerns) Kent Lopez, Washington Rural Electrification Cooperative Association; Robert Coit, Thurston County Food Bank; Greg Scheiderer, Independent Colleges of Washington; and Nancy Atwood, Puget Sound Energy.

(With concerns) Danielle Dixon, Northwest Energy Coalition; Rose Felicano, Seattle City Light; and Victoria Lincoln, Association of Washington Cities.

Persons Testifying (Ways & Means): Gary Shaver and Majken Ryherd, Silicon Energy.

Persons Signed In To Testify But Not Testifying (Technology, Energy & Communications): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.