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**SUBSTITUTE HOUSE BILL 1144**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Technology, Energy & Communications (originally sponsored by Representatives McCoy, Crouse, Eddy, Morris, Haler, Kelley, Lias, Jacks, Frockt, and Hudgins)

READ FIRST TIME 02/15/11.

1       AN ACT Relating to renewable energy investment cost recovery  
2 program; amending RCW 82.16.130; and reenacting and amending RCW  
3 82.16.110 and 82.16.120.

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

5       **Sec. 1.** RCW 82.16.110 and 2010 c 202 s 1 and 2010 c 106 s 225 are  
6 each reenacted and amended to 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 is capable of generating up to  
18 seventy-five kilowatts of electricity and is owned by local  
19 individuals, households, nonprofit organizations, nonprofit housing

1 organization or nonutility businesses that is placed on the property  
2 owned by a cooperating local governmental entity (~~that~~), an  
3 institution of higher education, a nonprofit organization, or a  
4 nonprofit housing organization if the cooperating entity, institution,  
5 nonprofit organization, or nonprofit housing organization is not in the  
6 light and power business or in the gas distribution business;

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

13 (iii) A solar energy system, placed on the property owned by a  
14 cooperating local governmental entity (~~that~~), an institution of  
15 higher education, a nonprofit organization, or a nonprofit housing  
16 organization if the cooperating entity, institution, nonprofit  
17 organization, or nonprofit housing organization is not in the light and  
18 power business or in the gas distribution business, (~~that~~) and the  
19 solar energy system is capable of generating up to seventy-five  
20 kilowatts of electricity(~~7~~) and (~~that~~) is owned by a company whose  
21 members are each eligible for an investment cost recovery incentive for  
22 the same customer-generated electricity as provided in RCW 82.16.120.

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

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

26 (A)(I) A limited liability company, except for a limited liability  
27 company with a nonprofit housing organization participating as a  
28 managing member for the purposes of accessing assistance from the  
29 Washington state housing finance commission under chapter 43.180 RCW;

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

31 (III) A mutual corporation or association formed under chapter  
32 24.06 RCW; and

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

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

37 (iii) "Nonprofit housing organization" means an entity eligible for  
38 assistance under RCW 43.185A.040 and engaged in activities eligible for

1 assistance under RCW 43.185A.030, including an entity materially  
2 participating as a managing member of a limited liability company,  
3 general partner of a partnership, or as an equivalent organization for  
4 the purposes of accessing assistance from the Washington state housing  
5 finance commission under chapter 43.180 RCW; and

6 (iv) "Utility" means a light and power business, an electric  
7 cooperative, or a mutual corporation that provides electricity service.

8 (3) "Customer-generated electricity" means a community solar  
9 project or the alternating current electricity that is generated from  
10 a renewable energy system located in Washington and installed on an  
11 individual's, businesses', or local government's real property that is  
12 also provided electricity generated by a light and power business.  
13 Except for community solar projects, a system located on a leasehold  
14 interest does not qualify under this definition. Except for utility-  
15 owned community solar projects, "customer-generated electricity" does  
16 not include electricity generated by a light and power business with  
17 greater than one thousand megawatt hours of annual sales or a gas  
18 distribution business.

19 (4) "Economic development kilowatt-hour" means the actual kilowatt-  
20 hour measurement of customer-generated electricity multiplied by the  
21 appropriate economic development factor.

22 (5) "Institution" or "institution of higher education" has the same  
23 meaning as provided in RCW 28B.92.030.

24 (6) "Local governmental entity" means any unit of local government  
25 of this state including, but not limited to, counties, cities, towns,  
26 municipal corporations, quasi-municipal corporations, special purpose  
27 districts, and school districts.

28 ~~((+6))~~ (7) "Photovoltaic cell" means a device that converts light  
29 directly into electricity without moving parts.

30 ~~((+7))~~ (8) "Renewable energy system" means a solar energy system,  
31 an anaerobic digester as defined in RCW 82.08.900, or a wind generator  
32 used for producing electricity.

33 ~~((+8))~~ (9) "Solar energy system" means any device or combination  
34 of devices or elements that rely upon direct sunlight as an energy  
35 source for use in the generation of electricity.

36 ~~((+9))~~ (10) "Solar inverter" means the device used to convert  
37 direct current to alternating current in a photovoltaic cell system.

1        ~~((+10))~~ (11) "Solar module" means the smallest nondivisible self-  
2 contained physical structure housing interconnected photovoltaic cells  
3 and providing a single direct current electrical output.

4        (12) "Stirling converter" means a device that produces electricity  
5 by converting heat from a solar source utilizing a stirling engine.

6        (13) "Solar inverter system" means a device assembled at the  
7 manufacturing facility and ready for installation as part of a solar  
8 energy system. A solar inverter system must contain a solar inverter  
9 and, at a minimum, alternating current and direct current disconnects.

10        **Sec. 2.** RCW 82.16.120 and 2010 c 202 s 2 and 2010 c 106 s 103 are  
11 each reenacted and amended to read as follows:

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

19        (b) In the case of a community solar project as defined in RCW  
20 82.16.110(2)(a)(i), the administrator must apply for the investment  
21 cost recovery incentive on behalf of each of the other owners.

22        (c) In the case of a community solar project as defined in RCW  
23 82.16.110(2)(a)(iii), the company owning the community solar project  
24 must apply for the investment cost recovery incentive on behalf of each  
25 member of the company.

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

33        (i) The name and address of the applicant and location of the  
34 renewable energy system.

35        (A) If the applicant is an administrator of a community solar  
36 project as defined in RCW 82.16.110(2)(a)(i), the certification must

1 also include the name and address of each of the owners of the  
2 community solar project.

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

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

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

10 (A) Any solar inverters and solar modules manufactured in  
11 Washington state;

12 (B) A wind generator powered by blades manufactured in Washington  
13 state;

14 (C) A solar inverter manufactured in Washington state or solar  
15 inverter system manufactured in Washington state;

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

17 (E) A stirling converter manufactured in Washington state;

18 (F) Solar or wind equipment manufactured outside of Washington  
19 state; or

20 (G) A wind generator manufactured in Washington state with a  
21 generating capacity of no more than five kilowatts;

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)(1).

35 (3)(a) ~~((By August 1st of each year application for the incentive~~  
36 ~~must be made to)) If required by the light and power business serving  
37 the situs of the system, persons receiving incentive payments must~~

1 apply to the light and power by August 1st of each year by  
2 certification in a form and manner prescribed by the department that  
3 includes, but is not limited to, the 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 application must also  
8 include the name and address of each of the owners of the community  
9 solar project.

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

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

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

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

19 (b) Within sixty days of receipt of the incentive certification the  
20 light and power business serving the situs of the system must notify  
21 the applicant in writing whether the incentive payment will be  
22 authorized or denied. The business may consult with the climate and  
23 rural energy development center to determine eligibility for the  
24 incentive payment. Incentive certifications and the information  
25 contained therein are subject to disclosure under RCW 82.32.330(3)(1).

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

1 that the department assesses interest upon delinquent tax under RCW  
2 82.32.050.

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

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

16 (a) For customer-generated electricity produced using solar modules  
17 or solar stirling converter manufactured in Washington state, two and  
18 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 or solar inverter system manufactured in Washington state, one  
22 and two-tenths;

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

26 (d) For all other customer-generated electricity produced by wind,  
27 eight-tenths; and

28 (e) For customer-generated electricity produced by a wind generator  
29 manufactured in Washington state with a generating capacity of no more  
30 than five kilowatts, three and three-tenths.

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

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

37 (c) Where the applicant is an administrator of a community solar

1 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible  
2 for an incentive but only in proportion to the ownership share of the  
3 project, up to five thousand dollars per year.

4 (d) Where the applicant is a company owning a community solar  
5 project that has applied for an investment cost recovery incentive on  
6 behalf of its members, each member of the company is eligible for an  
7 incentive that would otherwise belong to the company but only in  
8 proportion to each ownership share of the company, up to twenty-five  
9 thousand dollars per year. The company itself is not eligible for  
10 incentives under this section.

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

15 (6)(a) If requests for the investment cost recovery incentive  
16 exceed the amount of funds available for credit to the participating  
17 light and power business, (~~the incentive payments must be reduced~~  
18 ~~proportionately~~) no new applications may be approved for the light and  
19 power business, except as provided in (b) of this subsection.

20 (b) A new application may be approved for a light and power  
21 business when requests for the investment cost recovery incentive  
22 exceed the amount of funds available for credit to the participating  
23 light and power business, if the light and power business meets the  
24 requirements in section 3(1)(c) of this act and the incentive payments  
25 are reduced 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 (10) A local government entity or an institution of higher  
37 education that qualifies for the community solar incentive program has  
38 an option to purchase a solar energy system located on its property



1 from the owner at fair market value after the expiration of the cost  
2 recovery incentive program. The fair market value must take into  
3 consideration the following:

4 (a) The energy production from the solar energy system over its  
5 remaining useful life;

6 (b) The cost of the lease for the property that the solar energy  
7 system is located; and

8 (c) Maintenance, insurance, and cost of removal of the solar energy  
9 system if the host facility decides not to renew the lease.

10 **Sec. 3.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to read  
11 as follows:

12 (1)(a) A light and power business (~~shall be~~) is allowed a credit  
13 against taxes due under this chapter in an amount equal to investment  
14 cost recovery incentive payments made in any fiscal year under RCW  
15 82.16.120. The credit (~~shall~~) must be taken in a form and manner as  
16 required by the department. The credit under this section for the  
17 fiscal year may not exceed one-half percent of the businesses' taxable  
18 power sales due under RCW 82.16.020(1)(b) or one hundred thousand  
19 dollars, whichever is greater.

20 (b) Except as provided in (c) of this subsection:

21 (i) Incentive payments to participants in a utility-owned community  
22 solar project as defined in RCW 82.16.110(2)(a)(ii) may only account  
23 for up to (~~twenty-five~~) fifteen percent of the total allowable  
24 credit(~~(-)~~); and

25 (ii) Incentive payments to participants in a company-owned  
26 community solar project as defined in RCW 82.16.110(2)(a)(iii) may only  
27 account for up to (~~five~~) fifteen percent of the total allowable  
28 credit.

29 (c) For light and power businesses providing electrical service  
30 solely within a county with a population between thirty-nine thousand  
31 and forty-three thousand five hundred, incentive payments to  
32 participants in a utility-owned community solar project as defined in  
33 RCW 82.16.110(2)(a)(ii) and incentive payments to participants in a  
34 company-owned community solar project as defined in RCW  
35 82.16.110(2)(a)(iii) may only account for up to thirty percent of the  
36 total allowable credit.

1        (2) The credit may not exceed the tax that would otherwise be due  
2 under this chapter. Refunds (~~(shall)~~) may not be granted in the place  
3 of credits. Expenditures not used to earn a credit in one fiscal year  
4 may not be used to earn a credit in subsequent years.

5        (~~(+2)~~) (3) For any business that has claimed credit for amounts  
6 that exceed the correct amount of the incentive payable under RCW  
7 82.16.120, the amount of tax against which credit was claimed for the  
8 excess payments (~~(shall-be)~~) is immediately due and payable. The  
9 department (~~(shall)~~) must assess interest but not penalties on the  
10 taxes against which the credit was claimed. Interest (~~(shall-be)~~) is  
11 assessed at the rate provided for delinquent excise taxes under chapter  
12 82.32 RCW, retroactively to the date the credit was claimed, and  
13 (~~(shall)~~) accrues until the taxes against which the credit was claimed  
14 are repaid.

15        (~~(+3)~~) (4) The right to earn tax credits under this section  
16 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

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