
SECOND SUBSTITUTE HOUSE BILL 1144

State of Washington

62nd Legislature

2011 Regular Session

By House Ways & Means (originally sponsored by Representatives McCoy, Crouse, Eddy, Morris, Haler, Kelley, Lias, Jacks, Frockt, and Hudgins)

READ FIRST TIME 03/01/11.

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~~), a nonprofit
3 organization, or a nonprofit housing organization if the cooperating
4 entity, nonprofit organization, or nonprofit housing organization is
5 not in the light and power business or in the gas distribution
6 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~~), a nonprofit
15 organization, or a nonprofit housing organization if the cooperating
16 entity, nonprofit organization, or nonprofit housing organization is
17 not in the light and power business or in the gas distribution
18 business, (~~that~~) and the solar energy system is capable of generating
19 up to seventy-five kilowatts of electricity(~~(-)~~) and (~~that~~) is owned
20 by a company whose members are each eligible for an investment cost
21 recovery incentive for the same customer-generated electricity as
22 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) "Local governmental entity" means any unit of local government
23 of this state including, but not limited to, counties, cities, towns,
24 municipal corporations, quasi-municipal corporations, special purpose
25 districts, and school districts.

26 (6) "Photovoltaic cell" means a device that converts light directly
27 into electricity without moving parts.

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

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

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

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

1 (11) "Stirling converter" means a device that produces electricity
2 by converting heat from a solar source utilizing a stirling engine.

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

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

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

16 (b) In the case of a community solar project as defined in RCW
17 82.16.110(2)(a)(i), the administrator must apply for the investment
18 cost recovery incentive on behalf of each of the other owners.

19 (c) In the case of a community solar project as defined in RCW
20 82.16.110(2)(a)(iii), the company owning the community solar project
21 must apply for the investment cost recovery incentive on behalf of each
22 member of the company.

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

30 (i) The name and address of the applicant and location of the
31 renewable energy system.

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

36 (B) If the applicant is a company that owns a community solar

1 project as defined in RCW 82.16.110(2)(a)(iii), the certification must
2 also include the name and address of each member of the company;

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

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

7 (A) Any solar inverters and solar modules manufactured in
8 Washington state;

9 (B) A wind generator powered by blades manufactured in Washington
10 state;

11 (C) A solar inverter manufactured in Washington state or solar
12 inverter system manufactured in Washington state;

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

14 (E) A stirling converter manufactured in Washington state; or

15 (F) Solar or wind equipment manufactured outside of Washington
16 state;

17 (iv) That the electricity can be transformed or transmitted for
18 entry into or operation in parallel with electricity transmission and
19 distribution systems; and

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

22 (b) The Washington State University may charge for services to
23 cover the cost of processing applications and related technical
24 assistance to effectively administer the cost recovery program. If the
25 Washington State University charges for these activities, an applicant
26 must submit a payment along with the initial application. Application
27 charges may not exceed fair and reasonable costs associated with the
28 necessary and effective oversight of the cost recovery program.

29 (c) Within thirty days of receipt of the certification the
30 department of revenue must notify the applicant by mail, or
31 electronically as provided in RCW 82.32.135, whether the renewable
32 energy system qualifies for an incentive under this section. The
33 department may consult with the climate and rural energy development
34 center to determine eligibility for the incentive. System
35 certifications and the information contained therein are subject to
36 disclosure under RCW 82.32.330(3)(1).

37 (3)(a) ~~((By August 1st of each year application for the incentive~~
38 ~~must be made to)) If required by the light and power business serving~~

1 the situs of the system, persons receiving incentive payments must
2 apply to the light and power by August 1st of each year by
3 certification in a form and manner prescribed by the department that
4 includes, but is not limited to, the following information:

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

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

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

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

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

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

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

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

1 add thereto interest on the amount. Interest is assessed in the manner
2 that the department assesses interest upon delinquent tax under RCW
3 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 or solar stirling converter manufactured in Washington state, two and
19 four-tenths;

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

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

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

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

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

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

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

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

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

17 (b) A new application may be approved for a light and power
18 business when requests for the investment cost recovery incentive
19 exceed the amount of funds available for credit to the participating
20 light and power business, if the light and power business meets the
21 requirements in RCW 82.16.130(1)(c) and the incentive payments are
22 reduced proportionately.

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

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

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

33 (10) A local government entity that qualifies for the community
34 solar incentive program has an option to purchase a solar energy system
35 located on its property from the owner at fair market value after the
36 expiration of the cost recovery incentive program. The fair market
37 value must take into consideration the following:

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

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

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

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

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

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

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

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

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

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

1 (~~(+2)~~) (3) For any business that has claimed credit for amounts
2 that exceed the correct amount of the incentive payable under RCW
3 82.16.120, the amount of tax against which credit was claimed for the
4 excess payments (~~(shall be)~~) is immediately due and payable. The
5 department (~~(shall)~~) must assess interest but not penalties on the
6 taxes against which the credit was claimed. Interest (~~(shall be)~~) is
7 assessed at the rate provided for delinquent excise taxes under chapter
8 82.32 RCW, retroactively to the date the credit was claimed, and
9 (~~(shall)~~) accrues until the taxes against which the credit was claimed
10 are repaid.

11 (~~(+3)~~) (4) The right to earn tax credits under this section
12 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

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