HOUSE BILL REPORT
HB 1301

As Reported by House Committee On:
Technology & Economic Development
Finance

Title: An act relating to creating clean energy jobs in Washington state through renewable energy incentives.

Brief Description: Creating clean energy jobs in Washington state through renewable energy incentives.

Sponsors: Representatives Morris, Ryu, McCoy, Hudgins, Morrell and Pollet.

Brief History:
Committee Activity:
Technology & Economic Development: 1/29/13, 2/14/13 [DPS];
Finance: 2/25/13, 2/28/13 [DP2S(w/o sub TED)].

Brief Summary of Second Substitute Bill

- Streamlines reporting requirements for the Renewable Energy Investment Cost Recovery Incentive Program and closes the door to new entrants after June 30, 2013.
- Changes eligibility for the Renewable Energy Investment Cost Recovery Incentive Program as of July 1, 2013.
- Establishes that the state is making a contractually enforceable commitment to provide the tax credit to utilities, in exchange for the utilities' commitment to make 10 years of incentive payments pursuant to the voucher.
- Establishes a competitive tax credit pool within the Housing Finance Commission, available for projects with the greatest demonstrable impact on in-state job growth, use of components manufactured within the state, cost-effectiveness, and leveraging of non-state funds.
- Requires the Housing Finance Commission to submit annual reports to the Legislature, measuring the program's effectiveness based on objective benchmarks.

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 & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Morris, Chair; Habib, Vice Chair; Crouse, Assistant Ranking Minority Member; Freeman, Hudgins, Maxwell, Morrell, Stonier, Tarleton and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Smith, Ranking Minority Member; Dahlquist, Kochmar, Vick and Zeiger.

Staff: Jasmine Vasavada (786-7301).

Background:

I. The Renewable Energy Investment Cost Recovery Incentive Program.
In 2005 the Legislature created a Renewable Energy Cost Recovery Incentive Program (Program) to promote installation of renewable energy systems in Washington. These are systems that produce electricity from solar, wind, or anaerobic digesters. An individual, business, local government, or community solar project that owns and operates an eligible system may apply to receive incentive payments from the applicant's electric utility. These payments help subsidize the additional cost incurred by generating electricity from the renewable energy system. The utility, sometimes referred to in statute as the "light and power business," in turn receives a tax credit from the Department of Revenue equal to the incentive payments made.

Community Solar Projects.
In 2009 the Program was expanded to provide incentives for "Community Solar" projects. Community Solar projects include: (1) solar energy systems placed on local government property that are owned by local individuals, households, or nonutility businesses; (2) utility-owned solar energy systems voluntarily funded by the utility's ratepayers in exchange for credits on their utility bills; and (3) company-owned solar energy systems, where the owner is a limited liability company, a cooperative, or a mutual corporation or association.

Program Limits.
Payments.
Certain utilities, denominated as "light and power businesses," are responsible for providing incentive payments to the owners of eligible systems. Incentive payments are capped at $5,000 annually per applicant. For each kilowatt-hour of energy produced, an eligible system owner may receive incentive payments of at least 15 cents, and Community Solar projects are eligible to receive incentives at twice that rate. To promote the use of equipment manufactured in Washington, extra production incentives are available, depending upon which components are manufactured in Washington.

Incentive payments are applied for annually and there is no guarantee of rolling payments; that is, there is no guarantee that a system receiving the incentive payment in any given year will continue to receive a payment the following year.

Cap on Total Credits Available.

A utility is allowed a credit against its public utility tax (PUT) for incentives paid, capped annually at $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.

Measuring and Reporting Electricity Production.
Each year, a participant in the Program must reapply for the incentive, providing a statement of the amount of kilowatt hours generated by the system in the prior fiscal year. The energy output is measured by a production meter that records the amount of electricity generated.

Duration of Program.
The Program expires June 30, 2020.

<u>II. Sustainable Energy Trust</u>.
In 2011 the Washington State Housing Finance Commission (Commission) was tasked with developing and implementing a Sustainable Energy Trust Program. The purpose of the Sustainable Energy Trust is to provide funding for qualified renewable energy and energy efficiency improvement projects. The Commission issues bonds, participates in federal programs, and takes other actions to secure the benefits of renewable energy technologies for the people of Washington. Proceeds from the bonds issued by the Commission are used to make loans to eligible applicants who meet criteria demonstrating that they are most likely to repay the loans. An eligible applicant to the Sustainable Energy Trust Program is an owner of a residential, agricultural, commercial, state, or municipal property. The Commission makes decisions about the financing of projects involving solar electric systems in consultation with the Washington Climate and Rural Energy Development Center at Washington State University (WSU).

Housing Finance Commission.
The Commission was created in 1983 to act as a financial conduit that, without lending the credit of the state, can: issue nonrecourse revenue bonds; participate in federal, state, or local housing programs; make additional funds available at affordable rates to help provide housing throughout the state; and encourage the use of Washington forest products in residential construction.

Consultation with WSU Energy Extension Program.
The Commission consults with the WSU Energy Extension Program to determine which potential improvement technologies are appropriate. In 2002 the Legislature established the Washington Climate and Rural Energy Development Center (Center) in the WSU Energy Extension Program. The Center serves as a public source and central clearinghouse of impartial, nonregulatory, credible, and reliable information addressing various aspects of climate change and clean energy activities.

Summary of Substitute Bill:

I. Phase I.
The current Renewable Investment Cost Recovery Incentive Program is closed to new applicants as of June 30, 2013. Incentive payments are available to qualifying systems through June 30, 2020. The annual application requirements are streamlined. A utility capable of remotely determining the power output of a system, to a 98 percent degree of accuracy, may apply to the Department of Revenue for a waiver from the annual certification requirement. Instead of determining power output through reading the production meter, the amount of kilowatt-hours may be determined by reading an inverter connected to the system. Existing multipliers that increase the incentive when a system uses components manufactured in Washington are retained.

II. Phase II.
Beginning July 1, 2013, changes are made in who is eligible to receive incentive payments. Under the Phase II Program, the person or legal entity who is the meter holder of a customer-generated electricity renewable energy system may apply to receive a voucher from the Washington State Housing Finance Commission (Commission) entitling it to receive, from the utility serving the system, annual incentive payments for electricity generated by that system. The voucher provides payments for a 10 year term. A participant may not receive incentive payments for net kilowatt-hours produced in excess of the net kilowatt-hours consumed at the metered location, and the total annual incentive payment that a system may receive is capped at $25,000.

Application and certification requirements are streamlined and a utility may apply for a waiver from annual reporting, as described above in Phase I. Existing base rates and multipliers that increase the incentive when a system uses components manufactured in Washington are retained until July 1, 2018, and the incentive rate is fixed for the 10 year term of the voucher. Effective July 1, 2018, the Commission may adjust the rates to reflect decreases in the capital costs of purchasing and installing a renewable energy system. Adjusted rates will only apply to vouchers awarded after that date.

A utility that chooses to participate in the voucher program is entitled to claim tax credits equivalent to the payments made under the program. The utility may cease to accept vouchers for new systems at any time, but must continue to make payments pursuant to any voucher that it has accepted for its entire term. The Commission must award vouchers on a first-come, first-served basis. The amount of credits available for the Phase I and Phase II programs combined is 0.4 percent of each utility's annual taxable sales. However, the Commission must transfer additional credits from the Competitive Pool (described below) if insufficient credits are available to a utility to provide incentive payments to meet the demand for the Phase II credit in that utility's service area.

III. Green Jobs Competitive Pool.
A "Green Jobs Competitive Pool" (Competitive Pool) is created within the Sustainable Energy Trust Program. The purpose of the Competitive Pool is to promote installation of renewable energy systems in Washington, giving preference to systems that present the highest economic and environmental value to the state. The Commission must establish objective, competitive criteria for awarding vouchers entitling applicants to receive incentive

payments from utilities for a 10 year term. Utilities may claim a tax credit equivalent to the incentive payments made. Preference is given to nonprofits and community projects that encourage a large number of community members to participate in ownership of the system. The criteria must include, in priority order, the following:

- the amount of subsidy, in cents per kilowatt-hour, the applicant is seeking;
- whether the system contains Washington-manufactured components or components manufactured in compliance with state environmental and labor laws;
- the system's estimated levelized cost per kilowatt-hour generated;
- the degree to which installation of the system or type of system contributes to verifiable job creation in the State of Washington; and
- the degree to which the state investment of green job tax credits pursuant to the voucher leverages non-state funds.

The total value of the vouchers that may be awarded is capped at 0.1 percent of the annual taxable sales of all utilities that voluntarily participated in the Phase I Program. However, this total amount available may be reduced if the Commission determines it is necessary to reserve some of the credits to permit a utility to make additional incentive payments in the Phase II Program. The Commission is authorized to assess a fee to cover its costs in administering the Program.

IV. Performance Milestones and Assessment.

Performance milestones are established by which the programs' effectiveness may be measured, including growth in renewable-related employment, increase in the state's relative national ranking for solar-related employment, and a doubling in the utilization of the tax credits awarded under the chapter. The Commission must annually report to the Legislature, detailing the progress in achieving the performance milestones. All recipients of the tax credits must provide the Commission with any data requested for reporting purposes, under penalty of losing the award in the following year.

Substitute Bill Compared to Original Bill:

Phase I.

- Clarifies that no incentive may be paid under the existing Cost Recovery Incentive Program after June 30, 2020.

Phase II.

- Moves administration of Phase II from the Department of Revenue to the Housing Finance Commission (Commission), and establishes a voucher entitling the recipient to incentive payments at a fixed rate for a 10 year term.
- Caps the annual incentive payment a participant may receive at $25,000.
- Changes the formula for the total payments that may be authorized in Phase II, capping the combined payments under Phase I and Phase II at 0.4 percent of the utility's annual taxable sales.
- Broadens the definition of a legal entity eligible to apply for a voucher under the Phase II Program.
- Removes the requirement that rates be adjusted proportionately if demand for incentive payments exceeds the amount allocated to the Phase II Program, instead awarding incentives on a first-come, first-served basis.

- Removes the "market correction factor" and instead authorizes the Commission to adjust incentive rates once, effective July 1, 2018, for vouchers awarded on or after that date, to reflect decreases in capital costs of customer-generated electricity renewable energy systems.

Competitive Pool.
- Limits the size of eligible systems to 100 kilowatts.
- Changes the formula for awarding tax credits in the Competitive Pool, capping such credits at 0.1 percent of the annual taxable sales of utilities that participated by claiming a tax credit in the original Renewable Investment Cost Recovery Incentive Program.
- Clarifies that the Commission shall administer a competitive pool that awards vouchers entitling the participant to 10 years of annual incentive payments from the utility serving the situs of a project.
- Changes the allocation of tax credits to the Competitive Pool to ensure that enough credits are reserved for the Phase II Program to meet demand for Phase II credits within each utility's service area.
- Requires the Commission, in determining whether to award a voucher under the Competitive Pool, to consider the levelized system cost instead the warrantied life of the system.
- Instructs the Commission, in awarding vouchers, to give a preference to nonprofits and systems that encourage the greatest amount of community participation.

Other.
- Includes a severability clause and effective date of July 1, 2013.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 13, 2013.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2013.

Staff Summary of Public Testimony:

(In support) The current Renewable Energy Investment Cost Recovery Incentive Program helped attract a clean energy manufacturing sector to the state, but it has been underperforming, in terms of the difference between what the state has made available as credits and what is getting utilized. This legislation is intended to improve utilization of the tax credit and minimize bureaucracy. It will increase jobs for installers and manufacturers in the State of Washington.

The renewable energy sector has been growing in the state even during a "great recession," when every other sector except biotechnology has been in decline. The purpose is to create a solar manufacturing industry in the State of Washington. When the Columbia hydroelectric power system was built, it was the most expensive facility in the world in that marketplace.

Sometimes a careful balance is required, between leaving the development of an industry to market forces, and paving the path for what is going to be the next big thing. The current administration of the tax credit by the Department of Revenue, with inconsistent rulings, has created instability, halting millions of dollars of product from being distributed. The move to the Washington State Housing Finance Commission (Commission), with decades of experience in leveraging federal incentives, dealing with tax credit structures in complex projects, and administering programs with different financing schemes, is a key step forward. The move to a Competitive Pool should also improve program implementation, and help open up solar technology to food banks, colleges, and others who have been unable to participate in the existing Community Solar programs.

(In support with concerns) The solar manufacturing and installation sector needs a program like this where the incentive payback is linked to when your system was installed, not when a government program expires. When it comes to job creation, Community Solar programs is not where the jobs come from. The original intent of Community Solar programs was to allow schools to have solar projects while investors can still get a return on the investment, but it is subject to federal security laws. True job creation does not come from the large installations but from the small residential installations. Community Solar projects are already eligible for other federal incentives. Encouraging aspects of the proposed legislation include the streamlining of paperwork, improvement of program administration, and the recognition that the primary job creator is in the fields, with installation of these systems. But predictability is key and must be considered when drafting changes to the incentive program, and it is better when a significant change is planned a year or more in advance, so there is adequate time to prepare. It is also important to make sure that enough credits are retained in Phase II to promote the full growth of the residential solar programs. The Commission is a self-funded organization so needs authority to charge a fee to cover its administrative costs.

(With concerns) Extending the current cost recovery program is an understandable goal since it will expire in 2020. From the perspective of public utility districts and rural electric cooperatives, any change from current voluntary participation to mandatory participation in the incentive program would be of concern. It is unclear how this ensures that five years down the line, a system can still get a 10 year incentive. If you move to 10 year contracts, it is unclear what obligation a utility has if the state stops funding the program. There needs to be a comparable commitment from the state to reimbursing the utilities, providing security to utilities that are required to sign that contract. In the current program, utilities have a safety valve that every year, a utility can drop out if funding dries up. It is hoped that Community Solar programs can continue to exist and be successful. It is very popular out in the smaller, rural communities where people can band together and buy shares. On a technical note, the bill moves away from requiring the use of a utility-grade meter; these meters have proven to be an accurate way of gauging power generation, so it would be preferable to continue to provide for the use of them, even if alternative metering methods as well. The start date for incentive payments should be linked to when a meter is installed. The proposed legislation does not reflect an incentive rate that declines over time as the energy becomes more affordable, reflecting anticipated efficiencies in technology development and scale. The credit allocation formula and the "market correction factor" are making the program harder to understand and explain, undermining predictability, and confusing customers.

(Opposed) None.

Persons Testifying: (In support) Representative Morris, prime sponsor; Kelly Samson, Hek Energy; Majken Ryherd, Silicon Energy; and Kim Herman, Housing Finance Commission.

(In support with concerns) Dever Kuni, South Sound Solar.

(With concerns) Dave Warren, Washington PUD Association; Kathleen Collins, PacifiCorp; Kent Lopez; Nancy Atwood and Jake Wade, Puget Sound Energy; and Victoria Lincoln, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

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 & Economic Development. Signed by 8 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Lytton, Pollet, Reykdal and Springer.

Minority Report: Do not pass. Signed by 5 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Vick and Wilcox.

Staff: Jeffrey Mitchell (786-7139).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Technology & Economic Development:

The second substitute bill changes eligibility requirements for receiving incentive payments under the Renewable Energy Investment Cost Recovery Incentive Program, establishing that at least until December 31, 2015, the applicant must be both the meter holder and an owner of the system. It authorizes the Housing Finance Commission (Commission), after December 31, 2015, and pursuant to public hearing and comment, to allow third party owners to receive the incentive, if the Commission determines this would be consistent with the goals of the act and in compliance with applicable laws and rules. The second substitute bill establishes that the state is making a contractually enforceable commitment to provide the tax credit to utilities, in exchange for the utilities' commitment to make 10 years of incentive payments pursuant to the voucher. It provides for consistent expiration dates by removing a provision establishing that no credit may be claimed after 2030, providing instead that the authority of the Commission to issue a voucher authorizing an incentive payment for a 10-year term expires on June 30, 2023. The Commission's authority is limited after June 30, 2023, to reporting to the Legislature on the progress of the program, collecting data required for this reporting, and assessing fees as necessary to cover the costs of reporting. The second substitute bill makes changes to the performance criteria to be used by the Commission in awarding vouchers in the competitive pool program and the evaluation criteria used to evaluate the performance of the program. It requires biennial reports by the Commission to the Legislature, instead of annual reporting. It directs the Joint Legislative Audit and Review Committee to conduct a review of the program's performance in calendar year 2022. Lastly, the second substitute bill extends the Commission's authority to assess a fee to cover its administrative costs to explicitly include the costs of administering all activities authorized in the act, rather than only the activities related to the competitive pool program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2013.

Staff Summary of Public Testimony:

(In support) This bill does not expand the fiscal scope of the program; however, it addresses some operational issues. The Department of Revenue did not want to continue to administer the program. The Commission is probably the best agency to address deal structures. There are two solar manufacturers that were not here before the passage of the original act. Washington is one of the top 10 to 15 states for solar energy related jobs. Very little of the program is being utilized. This bill makes changes that will hopefully lead to a higher utilization of the program. There is a second proposed substitute in the works that addresses lease arrangements, which has been an issue. It also addresses some of the trade issues. The proposed second substitute also addresses some issues regarding the administration of the program by the Commission. This bill is a job driver. The underlying statute has worked to create jobs. The Commission is a better fit to administer the program. The 10-year payments and the increased cap are good changes by creating stability. This program is one of the direct contributors to the great success of my business. This bill not only helps solar but green technology in general.

(With concerns) There are considerable concerns about the impact to businesses, customers, and taxpayers. There are several built-in cost drivers: the considerable increase in the cap, the extension of the program for another ten years, and the expansion of the program by the creation of an additional pool of projects.

(Opposed) None.

Persons Testifying: (In support) Representative Morris, prime sponsor; Majken Ryherd, Silicon Energy; Jim Justin, Itek Energy; and Brian Heather, Solterra Systems.

(With concerns) Nancy Atwood, Puget Sound Energy.

Persons Signed In To Testify But Not Testifying: None.