HOUSE BILL REPORT
HB 2176

As Reported by House Committee On:
Technology & Economic Development

Title: An act relating to leased energy systems.

Brief Description: Concerning leased energy systems.

Sponsors: Representative Morris.

Brief History:
Committee Activity:
Technology & Economic Development: 1/14/14, 1/31/14 [DPS].

Brief Summary of Substitute Bill

- Authorizes electric utilities to offer to its customers across all rate classes the opportunity to lease from the electric utility a renewable energy system that will be installed on the customer's property.
- Specifies that if an electric utility offers a leased energy program, no other entity may offer leases to the utility's customers.
- Authorizes third-party vendors to lease renewable energy systems to the customers of an electric utility if the utility chooses not to offer a leasing program.
- Requires third-party vendors of renewable energy systems to register with the Utilities and Transportation Commission (UTC) as a competitive electrical company before beginning operations in Washington.
- Subjects competitive electrical companies to minimal regulation by the UTC.

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; Smith, Ranking Minority Member; Fey, Freeman, Hudgins, Morrell, Ryu, Stonier, Tarleton and Wylie.

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.

Minority Report: Do not pass. Signed by 7 members: Representatives Short, Assistant Ranking Minority Member; DeBolt, Kochmar, Magendanz, Vick, Walsh and Zeiger.

Staff: Scott Richards (786-7156).

Background:

Utilities and Transportation Commission.
The Washington Utilities and Transportation Commission (UTC) is a three-member board that regulates the rates, services, and practices of privately owned utilities and transportation companies. Regulated companies include electric, telecommunications, natural gas, and water. The commission also regulates in-state household movers, solid waste carriers, private ferries, and inter-city busses, as well as safety issues affecting charter buses, railroads, limousines, and nonprofit senior/handicapped transportation services.

Net Metering.
Under current law, net metering allows electricity customers to offset their consumption of purchased electricity with electricity generated by their own small scale net metering system. A net metering system must generate no more than 100 kilowatts using water, wind, solar energy, biogas from animal waste, a fuel cell, or a facility that produces electricity and used and useful thermal energy from a common fuel source.

In July 2013, the UTC amended rules concerning interconnection of small energy systems to the power grid. The UTC rules provide that:

- A net-metered interconnection customer may lease a generating facility from or purchase power from a third-party owner.
- A third party may own a generating system and sell its power to the homeowner. The homeowner may use that power in a net metering relationship with her utility.

Renewable Energy Investment Cost Recovery Incentive Program.
In 2005 the Legislature created a Renewable Energy Investment Cost-Recovery Incentive Program (Cost-Recovery 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 $0.15 for each kilowatt-hour (kWh) of electricity produced, with extra incentives for solar or wind generating systems that use certain components manufactured in Washington.

In 2009 the Legislature expanded the Cost-Recovery Program to include community solar projects. Community solar projects are eligible to receive incentives of $0.30 for each kWh of electricity produced, with extra incentives for solar or wind generating systems that use certain components manufactured in Washington.

Incentive payments under the Cost-Recovery Program are capped at $5,000 annually per applicant. The Cost-Recovery Program expires June 30, 2020.

A participant in the Cost-Recovery Program must own the renewable energy system to be eligible for incentives under the program.

Summary of Substitute Bill:

Lease Energy Program.
An electric utility may offer a leased energy program. The leased energy program must offer to customers across all rate classes the opportunity to lease from the electric utility a renewable energy system that will be installed on the customer's property. If an electric utility offers a leased energy program, no other entity may offer leases to the utility's customers. If an electric utility does not offer a leased energy program that provides customers across all rate classes access to renewable energy systems on their property, third-party vendors may offer these systems through leases to the electric utility's customers. A third-party vendor is defined as an entity that seeks to lease and install renewable energy systems to electric utility customers.

An electric utility that offers a utility program must maintain a registry of contractors operating in the electric utility's service area that are licensed to install renewable energy systems. The electric utility shall provide the names and contact information for the contractors listed in the registry to customers who have indicated an interest in the utility program, in order to assist customers in identifying available renewable energy system installment services. In the case of a consumer-owned utility, the consumer-owned utility must follow applicable laws governing procurement and public works. In the case of an investor-owned utility, the investor-owned utility is encouraged to include in the registry all licensed contractors known to work in the utility's service area and any licensed contractor who requests to be included in the registry.

Lease Energy System.
A leased energy system is defined as a renewable energy system that is: (1) located in Washington; and (2) installed on an individual's, business's, or local government's real property that is not leased and is provided electricity generated by an electric utility. In addition, a leased energy system must be owned by one of the following:

- an electric utility and leased to a customer; or
- a third-party vendor that has contracted with a customer of an electric utility to lease a renewable energy system.

The following qualifies as renewable energy: (1) water; (2) wind; (3) solar energy; (4) geothermal energy; (5) landfill gas; (6) wave, ocean, or tidal power; (7) gas from sewage treatment facilities; (8) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; (9) biomass energy; or (10) high efficiency cogeneration.

Biomass energy is defined to include: (1) organic by-products of pulping and the wood manufacturing process; (2) animal manure; (3) solid organic fuels from wood; (4) forest or field residues; (5) untreated wooden demolition or construction debris; (6) food waste and food processing residuals; (7) liquors derived from algae; (8) dedicated energy crops; and (9) yard waste. Biomass energy does not include wood pieces that have been treated with chemical preservatives, wood from old growth forests, or municipal solid waste.

High efficiency cogeneration is defined as the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than 72 percent of the total energy output.

Option to Purchase Renewable Energy System.
Electric utilities or third-party vendors are encouraged to offer to customers the option to purchase the renewable energy system at the end of the lease term.

Transfer of Lease or Loan Obligation.
Any customer leasing a low-cost renewable energy system from an electric utility or a third-party vendor must be able to transfer the obligation with any change of ownership of the underlying property. A finding is provided that it is prudent to help facilitate the change of ownership of the underlying property by making sure owners disclose to customers and customers are fully informed of any environmental liabilities and disposal costs, if there be any, associated with the renewable energy system and any associated energy storage system.

Registration of Third-Party Vendors.
The Utilities and Transportation Commission (UTC) is required to publish a list of financing models being offered by investor-owned utilities or third-party vendors registered as competitive electrical companies. The governing boards of customer-owned utilities are required to publish a list of financing models being offered by the utility or third-party vendors registered as competitive electrical companies.

Competitive Electrical Companies.
A third-party vendor must register with the Utilities and Transportation Commission (UTC) as a competitive electrical company before beginning operations in Washington to provide loans for or to lease and install distributed renewable energy systems. The registration must be on a form prescribed by the UTC and contain that information as the UTC may require by rule.

Performance Bond.
The UTC may require as a precondition to registration the procurement of a performance bond sufficient to cover any advances or deposits the competitive electrical company may collect from its customers or order that the advances or deposits be held in escrow or trust.

Denial of Registration.
The UTC may deny registration to any company that:
- does not provide the information required by the UTC;
- fails to provide a performance bond, if required;
- does not possess adequate financial resources to provide the proposed service; or
- does not possess adequate technical competency to provide the proposed service.

Approval or Denial of Registration.
The UTC must take action to approve or issue a notice of hearing concerning any application for registration within 30 days after receiving the application. The UTC may approve an application with or without a hearing. The UTC may deny an application after a hearing.

Rule-making.
The UTC may adopt rules that describe the manner by which it will regulate competitive electrical companies, as well as the process for considering applications for registration.

Competitive Electrical Companies Subject to Minimal Regulation.
Competitive electrical companies are subject to minimal regulation by the UTC. The UTC may waive any regulatory requirement for competitive electrical companies when it determines that competition will serve the same purposes as public interest regulation. The UTC may waive different regulatory requirements for different companies, if the different treatment is in the public interest. The UTC may revoke any waivers it grants and may reclassify any competitive electrical company, if the revocation or reclassification would protect the public interest.

A competitive electrical company must at a minimum:
- keep its accounts according to regulations as determined by the UTC;
- file financial reports as required by the UTC and in a form and at times prescribed by the UTC;
- post its prices on a public website available to all potential customers; and
- cooperate with the UTC investigations of customer complaints.

Findings Relating to Third-Party Vendors of Renewable Energy Systems.
Findings are made that specify the following:
- Third-party vendors of distributed renewable energy systems are electrical companies and are subject to the jurisdiction of the UTC.
- A competitive marketplace with effective competition exists for the provision of loans for or leasing and installation of distributed renewable energy systems in Washington.
- Traditional rate-of-return, rate base regulation of electrical companies providing loans for or leasing and installation of distributed renewable energy systems may not provide the most efficient and effective means of achieving the public policy goals of this state.
- The UTC is authorized to employ an alternative form of regulation, if that alternative is better suited to achieving those policy goals.
- The UTC should retain its authority to protect consumers of distributed renewable energy systems from unreasonable deceptive practices.

Net Metering Program.
Only leased energy systems that can store up to 20 percent of the maximum total system hourly output for four hours are eligible for net metering. Electric utilities or third-party vendors may centralize energy storage systems on the distribution system to meet energy storage requirements for lease energy systems participating in the net metering program.

Report on Financial Benefits of a Leased Energy System.
Upon request of the Utilities and Transportation Commission (UTC), investor-owned utilities and third-party vendors offering leased energy systems must provide information on the financial terms of leased energy systems currently under contract. The UTC must use this information to determine how each party to a lease energy system contract benefits financially. The UTC must report its findings to the Legislature by December 1, 2017.

Environment Consequences of Leased Energy Systems and Energy Storage Systems.
The Department of Ecology (DOE) is directed to conduct an assessment of the environmental consequences, throughout the product lifecycle, associated with leased energy systems and energy storage systems installed in Washington containing hazardous materials, rare earth minerals, and other commercially valuable materials. Additionally, the DOE must identify and convene appropriate parties to develop recommendations on the responsible management of hazardous wastes, and recovery of rare earth minerals and other commercially valuable materials contained in renewable energy systems at the end of a system's life. The DOE must present its report and recommendations to the Legislature by December 1, 2014.

Substitute Bill Compared to Original Bill:

Leased Energy Program.
The term "low-cost renewable energy system" is replaced with the term leased energy system. Provisions relating to electric utilities and third-party vendors offering loans for renewable energy systems is removed. An electric utility offering a utility leased energy system program must maintain a registry of contractors operating in the electric utility's service area that are licensed to install renewable energy systems and that the electric utility must provide the contact information for the contractors listed in the registry to customers interested in the utility program, in order to assist customers in identifying available renewable energy system installment services. Electric utilities and third-party vendors offering leased energy systems must provide customers the option to purchase a renewable energy system at the end of the lease term, rather than requiring electric utilities and third-party vendors to provide an option to purchase the system at fair market value. A provision that requires an electric utility or third-party vendor leasing a renewable energy system to a customer to demonstrate prior to signing the lease that there will be a net benefit to the property owner at the conclusion of the lease is removed. A definition for biomass energy is provided. It is specified that a high efficiency cogeneration must have a useful thermal energy output of no less than 72 percent, rather than 33 percent. A finding is provided that it is prudent to help facilitate the change of ownership of the underlying property by making sure owners disclose to customers and customers are fully informed of any environmental liabilities and disposal costs, if there be any, associated with the renewable energy system and any associated energy storage system.

Net Metering.
Electric utilities or third-party vendors may centralize energy storage systems on the distribution system to meet energy storage requirements for lease energy systems participating in the net metering program.

Renewable Energy Investment Cost Recovery Program.
The provision specifying that low-cost renewable leased energy systems are not eligible for the Renewable Energy Investment Cost Recovery Program, if the program is extended beyond 2021, is removed.

Utilities and Transportation Commission Report on Financial Benefits of Leased Energy Systems.

The Utilities and Transportation Commission is directed to determine how each party to a lease energy system contract benefits financially and report its findings to the Legislature by December 1, 2017.

Environment Consequences of Leased Energy Systems and Energy Storage Systems. The Department of Ecology is directed to conduct an assessment of the environmental consequences, throughout the product lifecycle, associated with leased energy systems and energy storage systems installed in Washington containing hazardous materials, rare earth minerals, and other commercially valuable materials. Additionally, the DOE must identify and convene appropriate parties to develop recommendations on the responsible management of hazardous wastes, and recovery of rare earth minerals and other commercially valuable materials contained in renewable energy systems at the end of a system's life. The DOE must present its report and recommendations to the Legislature by December 1, 2014.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There were stakeholder meetings during the interim to address issues relating to the Renewable Energy Cost Recovery Program (Cost Recovery Program) and other distributed generation issues. This bill address third-party ownership matters separate from the Cost Recovery Program. This bill represents a pathway that works for the most stakeholders. Utilities should have the first opportunity to put in place a leased energy program and acknowledges that some utilities may already have in place programs that promote renewable energy systems through loan or leasing programs.

Solar installers would like to see electric utilities play a greater role in financing solar energy systems in the state. There are concerns that large for-profit companies would have a negative impact on established solar installers already operating in the state. Additionally, the benefits of the state incentives should flow to in-state manufacturers of solar energy components. Electric utilities like the opportunity to offer a leased energy program before third-party vendors are allowed to provide leased energy systems. Electric utilities would like to maintain a relationship with their customers.

The leasing of renewable energy systems is a new way of doing business on the grid. Lease agreements with third-party vendors may not have adequate protections for the consumers. There are concerns about the utility having to deal with a third-party vendor when it comes to the safety issues of these renewable energy systems that are connected to the electrical grid. Traditionally, utilities have only needed to maintain a relationship with customers and not with a third-party vendor.

(In support with concerns) The bill is supportive of customer choices. It is favorable to utility leasing and provides necessary oversight of other leasers operating in Washington. There are issues that still need to be addressed such as cost shifting among customers relating to the upkeep of the system.

(With concerns) This bill raises concerns about limiting net metering program benefits to leased systems with storage capacity. It does not define the purpose or responsibilities of a competitive electrical company. The bill unintentionally includes banks and credits unions.

(Other) This bill is not opposed to third-party financing. It provides consumer protections.

(Opposed) In other states, customers have been able to get access to solar energy systems where third-party companies have been able to offer the choice of leasing a system or buying it outright. This bill would allow the leasing options, but only to incumbent utilities. The barriers put in place by this bill will dissuade third-party companies from operating in the state. This bill represents a discriminatory regime with burdensome regulations. The role of leases and power purchase agreements have grown significantly in the last few years. Solar is no longer available to just the wealthy few. Since 2009 two-thirds of the solar installments in California have been resulted from leasing or power purchase agreements. Numerous local jobs have been created through leases and power purchase agreements. The policies found in this bill will prevent third-party vendors from entering the Washington market and will expand utility monopolies. This bill is against customer choice and creates a hostile environment for third-party vendors.

Persons Testifying: (In support) Representative Morris, prime sponsor; Dever Kuni, Solar Installers of Washington; Matt Steuerwolt, Itek Energy; John Rothlin, Avista; and Ann Rendahl, Washington Utilities and Transportation Commission.

(In support with concerns) Nancy Atwood, Puget Sound Energy.

(With concerns) Joni Bosh, Northwest Energy Coalition; and Dave Warren, Washington Public Utility District Association.

(Other) John Carroll, Silicon Energy.

(Opposed) Michael O'Brian, Renewable Northwest Project; Andy Schwartz, Solar City; and Anne Smart, The Alliance for Solar Choice.

Persons Signed In To Testify But Not Testifying: None.