

# HOUSE BILL REPORT

## HB 1912

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

**Title:** An act relating to distributed generation.

**Brief Description:** Relating to distributed generation.

**Sponsors:** Representatives Morris and Tarleton.

**Brief History:**

**Committee Activity:**

Technology & Economic Development: 4/15/15, 6/12/15 [DPS].

**Brief Summary of Substitute Bill**

- Extends the expiration date and per-utility limit for a public utility tax (PUT) credit that funds the Renewable Energy System Cost Recovery Program (Cost Recovery Program).
- Ends certain sales and use tax exemptions, as applied to solar equipment, at the end of 2015 instead of 2018 or 2020.
- Modifies the Cost Recovery Program to provide lower base incentive rates, different bonus rates, and annual step-downs in the rates for newly certified systems.
- Allows renewable energy systems owned by third parties to receive the Cost Recovery Program incentive, and provides a regulatory framework for third-party owners.
- Directs the Department of Ecology to develop recommendations for a solar module recycling program.
- Requires an independent consultant to prepare a two-phase "Smart Plan for a Smart Grid" study.

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### HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 8 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking

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*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 Member; DeBolt, Assistant Ranking Minority Member; Magendanz, Ryu, Santos and Wylie.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Fey, Nealey and Young.

**Staff:** Jasmine Vasavada (786-7301).

### **Background:**

#### Renewable Energy Investment Cost Recovery Incentive Program.

Until June 2021, pursuant to the Renewable Energy Investment Cost Recovery Incentive Program (Cost Recovery Program), an electric utility may claim a credit against its public utility tax (PUT) due for incentive payments made by a utility for electricity produced by qualified renewable energy systems and Community Solar projects.

#### Administration of the Cost Recovery Program.

The Department of Revenue (DOR), with technical assistance from the Washington State University Energy Program (WSU), administers the Cost Recovery Program.

#### Annual Incentive Payments.

An individual, business, or local government that owns and operates an eligible renewable energy system installed on property owned by the applicant may apply to receive an annual incentive payment from the applicant's electric utility for each kilowatt-hour (kWh) of electricity produced by an eligible renewable energy system. Eligible renewable energy systems are solar energy systems, wind generators, and anaerobic digesters. In addition to providing a base rate of 15 cents per kWh, multipliers are available if certain system components are manufactured in Washington. Taking multipliers into account, the highest incentive rate available is 54 cents per kWh, for solar energy systems with modules and inverters manufactured in Washington.

#### Community Solar Projects.

In 2009 the Cost Recovery Program was expanded to provide annual incentive payments for electricity generated by "Community Solar" projects. Community Solar projects include: (1) solar energy systems placed on local government property that are owned by local individuals, households, or non-utility 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. The base rate of 30 cents per kWh for Community Solar Projects also may be increased by multipliers, such that the highest rate available under the Community Solar Program is \$1.08 kWh.

#### Cap on Total Public Utility Tax Credits Available.

Utility participation in the Cost Recovery Program is voluntary. A utility is allowed a credit against its PUT in return for annual incentive payments made, capped annually at \$100,000 or 0.5 percent of its taxable power sales, whichever is greater.

The amount of the total allowable credit that can be allocated as payments to participants in Community Solar projects is limited, as follows:

- utility-owned Community Solar project payments may only account for up to 25 percent; and
- company-owned Community Solar project payments may only account for up to 5 percent.

#### Utilities and Transportation Commission.

The Washington Utilities and Transportation Commission (UTC) is a three-member commission that has broad authority to regulate the rates, services, and practices of private or investor-owned utilities, including electrical companies. The UTC is required to ensure that rates charged are "fair, just, and reasonable."

#### Renewable Energy Systems Owned by Third Parties.

In lieu of purchasing a renewable energy system, a customer can access the electricity produced by such a system hosted on the customer's property but owned by a third party. Third-party vendors (also called third-party owners) own the equipment and enter contractual arrangements with customers. For third-party-owned solar energy systems, the contract is most commonly structured as a lease or a power purchase agreement (PPA). In July 2013 the UTC determined that a customer hosting a leased system is eligible for net metering under state law. In July 2014 the UTC issued an interpretive statement finding that, although the inquiry must be made on a case-by-case basis, a third-party owner providing access to a solar energy system through a lease or PPA would generally be under the jurisdiction of the UTC, who may regulate such a third-party owner as an electrical company. A customer who hosts but does not own a renewable energy system is currently unable to receive incentive payments under the Cost Recovery Program.

#### Sales Tax Incentives for Solar Equipment.

A sales and use tax exemption for solar energy systems that produce 10 kilowatts of power or less or use thermal heat to produce not more than 3 million British thermal units (BTUs) per day, and associated installation charges, expires June 30, 2018. A sales and use tax program that provides a 75 percent refund of the sales and use tax paid on solar energy systems capable of generating more than 10 kilowatts of electricity expires January 1, 2020.

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### **Summary of Substitute Bill:**

#### Renewable Energy Investment Cost Recovery Incentive Program.

The renewable energy investment cost recovery incentive program (Cost Recovery Program), as currently structured, is closed to new participants after December 31, 2015. Participants who enter the program before this date may continue to apply for annual incentive payments, at current incentive rates, through June 30, 2020.

#### Administration of the Cost Recovery Program.

Program management, technical review, and tracking responsibilities for administering the Cost Recovery Program are transferred from the Department of Revenue to the Washington State University Energy Extension Program (WSU), beginning January 1, 2016. The WSU is

authorized to develop any program requirements and policies necessary for administration of the incentive payments through a public process, and the Department of Revenue may adopt any rules necessary for the administration of the program, in consultation with the WSU.

#### Annual Incentive Payments.

The WSU may certify, beginning January 1, 2016, and ending June 30, 2020, new participants to receive 10 years of annual incentive payments, applying the following incentive rates:

1. a base rate of 16 cents per kilowatt-hour (kWh) for residential and Community Solar systems certified in 2016, declining annually for new systems until 6 cents per kWh in 2020;
2. a base rate of 10 cents per kWh for commercial systems declining annually to 4 cents per kWh in 2020;
3. a bonus rate of 12 cents per kWh for electricity generated with solar modules or wind generator components manufactured in Washington, declining annually to 2 cents per kWh in 2020;
4. a bonus rate of 5 cents per kWh for systems that incorporate a smart inverter, declining annually to 0 cents per kWh in 2020;
5. a bonus rate of 5 cents per kWh for systems that are part of a pilot project identified in the "Smart Plan for a Smart Grid" study; and
6. a bonus rate of 5 cents per kWh for a person or entity who signs an affidavit attesting that they are unable to benefit from federal tax incentives.

A "smart inverter" is one that the WSU determines, by reference to standards established the public utilities commissions in the Western Electricity Coordinating Council region, has sufficient functionality to provide utilities and state agencies ways to share granular data and diagnose operational and maintenance issues, such as ride-through of low and high voltage and frequency excursions and provision of volt-ampere reactive power by a fixed power factor.

Residential-scale systems (under 10 kW) and Community Solar Project participants may not receive more than \$5,000 in incentive payments. Larger systems (10 kW to 500 kW) may not receive more than \$25,000 or \$500/kW, whichever is less.

#### Community Solar Project Eligibility.

A Community Solar Project is defined as a solar energy system that is 500 kW or smaller, with at least 10 participants, each of whom is a utility customer that is a meter holder of the electric utility, and each of whom owns a share not to exceed 10 kW. No person may be a participant in more than one Community Solar Project per meter for which the person is a meter holder.

#### Cap on Total Public Utility Tax Funds Available.

The per-utility limit on total Public Utility Taxes available to fund the Cost Recovery Program is raised to 1 percent of a utility's taxable power sales or \$250,000, whichever is greater. In any fiscal year, funds available for certifications for leased energy systems or community solar projects are capped at 25 percent of the total funds available.

#### New Credit for Utility Software Purchase.

An additional one-time credit of up to \$100,000 is provided to a utility that purchases software enabling the utility to view renewable energy systems and is capable of electronically receiving data from the WSU. The right to earn this credit expires December 31, 2015.

#### Participation by Third-Party Owned Systems.

Systems hosted but not owned by a utility customer are eligible to receive the cost recovery incentive and a new regulatory framework is created for such systems. The Legislature finds that the UTC should regulate, as "competitive electrical companies" (CECs), third-party vendors who provide renewable energy systems to consumers through a lease or other consumer contract and investor-owned utilities who invest company dollars in providing such systems to consumers. Third-party vendors and affiliates of an electric utility who provide competitive electrical services (access to the electricity produced by a renewable energy system through a consumer contract) must register with the UTC as a CEC, disclose terms of service, and cooperate with UTC investigations of consumer complaints. This includes requirements to provide, on a separate page in conspicuous print, certain terms addressing arbitration or waiving the right to join a class action, and to file with the UTC or the Attorney General copies of judgments or arbitration decisions in actions alleging violation of consumer protections.

#### Leased Energy Systems.

An electric utility is not liable for harm caused to a customer or CEC by disconnection of a leased energy system, except that the electric utility may not develop or apply disconnection standards that discriminate based on who owns the system. "Leased energy system" means a renewable energy system that is located in Washington and installed on a utility customer's premises, where the renewable energy system is: (a) owned by a competitive electrical company that has a consumer contract with a customer of the utility for competitive electrical services, as such terms are defined in section 11 of this act; or (b) owned by an electric utility and installed on the customer's side of the meter. A "consumer contract" is the lease, power purchase agreement, loan, or other financial agreement between a CEC and a customer, by which the customer obtains a beneficial interest in, other than direct ownership of, a renewable energy system installed on the customer's side of the meter on property controlled by the customer.

The rights and responsibilities of seller, buyer, and third parties are defined if there is a transfer of ownership of real property subject to a consumer contract, including a provision prohibiting a consumer contract from granting a utility or competitive electric company any authority to approve or disapprove the transfer of real property. Violations by a CEC are enforceable as unfair or deceptive acts under the Consumer Protection Act.

#### Certification Requirements.

New certification applications must be accompanied by a consumer template, developed in consultation with the UTC and Attorney General, filled out by an installer or CEC, and provided to the consumer prior to final execution of a consumer contract. The template must include terms deemed necessary for a consumer to understand the business deal, such as performance guarantees, respective rights of the parties, and the financial payback of the system. Certification applications also must include information identified by the WSU, in consultation with the UTC and the Department of Commerce, as necessary for aggregating in

a central platform that allows an electric utility to view solar energy systems as a fleet, such tilt, shading, azimuth, and global position systems coordinates.

#### Solar Module Recycling Program.

The Department of Ecology (Ecology) must make recommendations to the Legislature prior to October 31, 2016, for a program for recycling and decommissioning of solar modules and financing such activities, including consideration of how such a program may be modeled on an existing state electronic product recycling program financed through participation in the Washington Materials Management and Financing Authority. A manufacturer must register with Ecology as a participant in the solar module recycling program for the system to be eligible to receive the Cost Recovery Program incentive. Ecology must establish and implement a registration process by December 1, 2015.

#### Annual Reporting and Issuance of Payments.

Utility customers or, at the utility's option, the utility, must annually electronically report to the WSU the gross kWh generated by the renewable energy system. The WSU must calculate the amount of incentive payment due, unless a utility opts to perform the calculation. The utility must issue the incentive payment within 60 days of receiving from the WSU the amount due. A utility may identify an annual incentive payment date and an annual net metering true-up date for program participants served by that utility that are aligned with the utility's billing system cycles and with customer meter systems.

#### Confidentiality of Participant Information.

Information about incentive payments, system certifications, and total tax credit claimed are subject to disclosure and not confidential taxpayer information.

#### "Smart Plan for the Smart Grid" Study.

The Office of Financial Management, in consultation with the Joint Committee on Energy Supply and Energy Conservation, must competitively select an independent consultant to conduct a two-phase study to review distributed energy resources laws and policies and identify best practices, pilot projects, and analytical tools that can assist with planning for and accounting for the costs and benefits of distributed generation.

#### Taxpayer Performance Statement.

The Joint Legislative Audit and Review Committee must, in 2019, evaluate the Cost Recovery Program's performance, based on achievement of: (1) installation of 165 MW of solar energy systems; (2) improved cost-effectiveness, as measured by a shortened payback period compared to 2014; (3) growth of solar-related employment; (4) creation of a system for capturing data about installed solar systems that can be transferred to utilities; and (5) creation and propagation of tools that give utilities greater situational viewability of what customers' capital investments are being made behind the electricity meter. The legislative auditor must provide the Legislature with an overview of market conditions for solar energy system installation in the state.

#### Sales and Use Tax Exemptions for Solar Photovoltaic Systems.

The expiration date for existing renewable energy sales and use tax exemptions, as applied to solar photovoltaic systems of a size eligible to receive the production incentive (500 kW or less), expire December 31, 2015.

## **Substitute Bill Compared to Original Bill:**

All substitute bill provisions are new, since the original bill is title-only and does not establish any substantive provisions.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on June 11, 2015.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

### **Staff Summary of Public Testimony:**

(In support) This program has been responsible for growth of solar, creating living-wage jobs for solar installers, and positioning Washington manufacturers to take advantage of continued growth in the solar photovoltaic (PV) industry. The right balance is struck between providing enough incentive to promote solar and controlling the overall fiscal impact to the state. Significantly reducing incentive rates is reasonable. Provisions enable utilities to participate in the incentive programs by providing products to their customers. Some administrative streamlining is reflected in the bill but more could be done. This bill helps achieve energy independence and strong economic leadership. An efficient, clean electrical system that can accept additional load will facilitate a transition from carbon-intensive transportation. The increase in the per-utility Public Utility Tax credit available will benefit small utilities and rural cooperatives. The added level of consumer protection and indemnification of utilities from liability caused by disconnection of leased energy systems is positive. The Joint Committee on Energy Supply and Energy Conservation should be in the position to help select the consultant for the Smart Plan study, rather than the Office of Financial Management. The incentive caps would effectively limit larger systems to 100 kilowatts and should be raised.

(In support with concerns) The "Made in Washington" rates for wind turbines and towers are helpful in incentivizing wind power. A Community Wind program comparable to Community Solar should be created. System caps are not conducive to certain Community Solar participants. The Joint Legislative Audit and Review Committee study focuses only on solar performance measures. It would be preferable to start to study wind as well. Restrictions on incentive participants receiving credit under the net metering law are of concern. Regulation of third parties who lease solar energy systems is an important concept, because third-party vendors are companies who will be able to sell electricity at retail throughout the states, and the state will be engaged in solar retail wheeling. Electricity is a quasi-monopoly.

The electronic recycling program addresses an important concept without creating too much burden up front. Creating a distributed energy resources study rather than directly implementing smart planning is a positive step forward. There has historically been a one-way flow of electricity to end-use customers through wires, but now major national

companies are pairing a solar panel with smart phone-accessible thermostats, and it is important to start to consider the effect of such emerging products on the distribution grid. The WSU's role in administrating and calculating payments will reduce the burden on utilities. Consumer-owned utilities are included in the definition of leased energy systems, but should be excluded. There should be restrictions on assignability by the utility customer of the right to receive the annual payments. Utilities should be held harmless if they follow WSU's direction to withhold incentive payments. Since utilities and affiliates will be entering this program, utility participation should be limited to only customers the utility serves. The 40 percent program-wide cap on leased systems should be applied at the utility level. Preventing customers receiving the incentive from receiving net metering credit addresses the cost-shifting issue. Requiring customers to waive the right to net metering credit for excess generation in a billing cycle is problematic. Utilities should be consulted on both phases of the Smart Plan study. The bill should provide consumer protection for third parties, create a level playing field, ramp down the payback period, and expect solar to be able to compete without subsidies when the program ends. Smart inverter and priority circuit incentives are good. The bill helps maintain equity among current customers and reliability of the grid. The UTC's consumer protection work sections should be modified to clarify that services offered by a consumer-owned utility through a competitive electrical company are not subject to UTC jurisdiction.

(With concerns) The goals of providing a long-term path for solar incentives and addressing utility concerns about cost shifting in a reasonable way are laudable, but should not come at the expense of other renewable programs like Initiative 937 (I-937). Any linkage of passing a solar bill with passing another bill that would drastically lower support for renewables without reducing carbon emissions would be highly problematic. It is unclear how the net metering and bonus incentive provisions would work in practice. Issues need to be clarified in how leased systems and utilities interact and the definition of competitive electrical companies.

(Opposed) This bill limits the right of incentive participants to receive net metering credits, and Washington already has one of the lowest net metering thresholds in the country. This conflation of net metering and the Cost Recovery Program undermines the policy of promoting distributed resources. Renewable energy credits (RECs) remain with the applicant, and utilities own systems and apply for the incentive. This results in allowing utilities to claim REC credits under I-937, double counting renewables that are already double-counted under I-937. There are inconsistencies in consumer protection established for utility-owned and non-utility-owned systems. Priority circuits eligible for a 5-cent bonus are not well-defined, giving too much discretion to utilities to pick winners and losers. Support for the solar tax preference cannot be at the expense of I-937.

**Persons Testifying:** (In support) Kelly Samson, Itek Energy; Jeremy Smithson, Solar Installers of Washington; Nancy Atwood, Puget Sound Energy; David Giuliani, Washington Business Alliance; and Grant Nelson, Washington Rural Electric Co-op Association.

(In support with concerns) Britton Rife, Distributed Wind Energy Association; Dave Warren, Washington Public Utilities District Association; John Rothlin, Avista; and Lauren McCloy, Washington Utilities and Transportation Commission.



(With concerns) J.J. McCoy, Northwest Energy Coalition.

(Opposed) Kelly Hall, Renewable Northwest.

**Persons Signed In To Testify But Not Testifying:** None.