

SENATE BILL REPORT

E2SHB 2346

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 25, 2016

Title: An act relating to promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling.

Brief Description: Promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Morris, Smith, Haler, Rossetti, Tarleton, Hayes and Peterson).

Brief History: Passed House: 2/16/16, 77-20.

Committee Activity: Energy, Environment & Telecommunications: 2/24/16, 2/25/16 [DPA-WM, DNP, w/oRec].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown, Honeyford and Ranker.

Minority Report: Do not pass.

Signed by Senator McCoy, Ranking Minority Member.

Minority Report: That it be referred without recommendation.

Signed by Senators Cleveland and Habib.

Staff: Kimberly Cushing (786-7421)

Background: Renewable Energy Cost-Recovery Incentive Program. In 2005, the Legislature created a Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Program) to promote renewable energy systems located in Washington that produce electricity from solar, wind, or anaerobic digesters. In 2009, the Legislature expanded the Cost-Recovery Program to include community solar projects that are generally owned by multiple individuals, utilities, or companies. The Cost-Recovery Program expires June 30, 2020.

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.

Incentive Rate. The owner of an eligible system may apply for an incentive payment from the electric utility serving the applicant. The base rate for the incentive is generally \$0.15 per kilowatt-hour (kWh) of electricity produced, except that the base rate for community solar projects is set at \$0.30 per kWh produced. Extra incentives for solar or wind generating systems that use certain components manufactured in Washington can increase the incentive payments to \$1.08 per kWh produced for community solar projects and \$0.54 per kWh produced for all other systems.

Incentive Payment Caps. Incentive payments are capped at \$5,000 annually per applicant. In the case of community solar projects, each member is eligible for a payment in proportion to the member's ownership share up to \$5,000. A utility providing incentive payments is allowed a credit against its public utility tax (PUT) for incentives paid, limited to \$100,000 or 0.5 percent of its taxable power sales, whichever is greater. If the amount of incentive requests exceeds the amount of funds available to the participating utility, the incentive payments must be reduced proportionally for all customers.

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.

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

Electronic Products Recycling. Since 2009, the Department of Ecology has overseen E-Cycle, which provides for the recycling of electronic waste at no direct cost to consumers. Covered products include televisions, monitors, computers, laptops, and tablets. Manufacturers fund operations through payments based in part on each manufacturer's in-state market share.

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 75 percent refund of the sales and use tax paid on certain renewable energy systems, including solar energy systems, expires January 1, 2020.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): Cost Recovery Incentive Program. The Cost Recovery Program, as currently structured, is closed June 30, 2016. Before December 31, 2016, participants who have entered the program by submitting a certification to the Department of Revenue prior to June 1, 2016, must authorize the WSU Energy Program to administer their certification authorizing annual incentive payments at current incentive rates through June 30, 2020.

Continuing participants may authorize the WSU Energy Program to notify and coordinate with the utility serving a system to account for and remit a one-time payment to make whole the rates participants anticipated when they first received eligibility.

A system that was certified under the Cost Recovery Program cannot be certified under the new Production Incentive Program. After June 30, 2020, applications may instead be made directly to the WSU Energy Program for certification to receive payments at new rates, under the Production Incentive Program.

Cap on Total Public Utility Tax Credits Available. The per-utility limit on total public utility taxes available as credit to fund the Cost Recovery Program and the Production Incentive Program is 2 percent of the utility's taxable power sales in 2014, or \$250,000, whichever is greater. The WSU Energy Program must not certify additional community solar projects in any fiscal year in which 25 percent of the total funds available have already been allocated to community solar projects. The same is true for commercial-scale systems. A utility's participation in the Production Incentive Program is voluntary.

Production Incentive Program. Beginning July 1, 2016, a person who owns a renewable energy system may apply to the WSU Energy Program for certification establishing the person's eligibility to receive annual production incentive payments from the person's utility for a term of 10 years. The following renewable energy systems are eligible:

- residential-scale system that has a nameplate capacity of 12 kW or less;
- commercial-scale system that has a nameplate capacity greater than 12 kW; or
- community solar project no larger than 500 kW administered by a nonprofit organization or a utility.

Incentive Rates. The incentive rate available depends on the fiscal year (FY) of certification, the system type, and whether the system includes "Made-in-Washington" components, and decline as follows:

FY of system certification	Base rate - residential-scale	Base rate - commercial scale	Base rate - community solar	Made in Washington bonus
2017	\$0.13	\$0.08	\$0.13	\$0.05
2018	\$0.11	\$0.06	\$0.10	\$0.05
2019	\$0.09	\$0.04	\$0.07	\$0.04
2020	\$0.07	\$0.02	\$0.05	\$0.04

Annual Incentive Payment Limit. The WSU Energy Program may authorize an annual payment of up to \$5,000 for a residential-scale system or community solar project participant, and \$25,000 for a commercial-scale system.

Recertification of Expanded Systems. If an additional system is added at the same location or billing meter as a commercial-scale or residential-scale system, the applicant may seek recertification of an expanded system. Recertification expires on the same day as the original certification for the "residential-scale" or "commercial-scale" and applies to the entire system. The incentive rates and program rules are those in effect as of the date of the recertification.

Ownership of Environmental Attributes. A renewable energy system owner retains ownership of the environmental attributes of the system.

Transfer of Renewable Energy Systems. System certification follows the system if the new owner notifies the WSU Energy Program of the transfer of the renewable energy system and provides an executed interconnection agreement with the utility.

Administration of the Production Incentive Program. Program management, technical review, and tracking responsibilities for administering the Cost Recovery Program are transferred from DOR to the WSU Energy Program beginning July 1, 2016. The WSU Energy Program must require applicants to provide system operations data, including global positioning system coordinates, tilt, estimated shading, and azimuth. The WSU Energy Program must establish a fee-for-service system to accept electricity production data from the utility or customer to cover the agency's cost in obtaining the necessary information from the utility or directly from customers by electronic reporting or by mail. The fee may be deducted by the utility from their PUT credit.

The WSU Energy Program must establish a list of equipment eligible for the "Made-in-Washington" bonus rates. The WSU Energy Program must make publicly available online all lists, technical specifications, determinations, and guidelines that it develops.

The WSU Energy Program may establish a one-time fee of \$100 per applicant to cover its costs in administering the Production Incentive Program. If the WSU Energy Program determines it is unable to implement the program within the funds provided by the fee, it must report to the Legislature. The DOR may, in consultation with the WSU Energy Program, adopt any rules necessary for administration of the program.

Community Solar Projects. Community solar projects may be up to 500 kilowatts in size and must have at least 10 participants, all of whom must be customers of the utility providing service at the project's location. Additionally, a Public Utility District (PUD) may enter into an agreement with a Joint Operating Agency (agency) to construct and own a community solar project located on property owned by the agency or that receives electric services from a PUD. Each participant must be a customer of at least one of the PUDs that is a party to the agreement.

The purpose of a community solar project is to facilitate broad, equitable community investment in and access to solar power. A utility or nonprofit organization may establish a reasonable fee to cover its costs and must give project participants clear and conspicuous notice of the portion of the incentive payment that will be assessed as a fee.

Solar Module Stewardship and Takeback Program (Stewardship Program). By January 1, 2017, Ecology must establish a process to develop guidance for a Stewardship Program to guide manufacturers in developing solar module stewardship plans. The guidance must be completed by January 1, 2018. A stewardship organization may be designated by a manufacturer to operate and implement the Stewardship Program.

Each manufacturer must prepare and submit to Ecology a stewardship plan by January 1, 2019, or within 30 days of its first sale in or into the state, whichever is later. A stewardship plan must include an adequate funding mechanism to finance the costs of the collection, management, and recycling of solar modules and residuals sold in or into the state by the manufacturer, such that it ensures solar modules can be delivered to take-back locations without cost to the last owner or holder. A stewardship plan also must:

- accept all solar modules sold in or into the state after July 1, 2016;
- describe how the program will minimize the release of hazardous substances and maximize the recovery of other components, including rare earth elements and commercially valuable materials;
- provide for take-back at locations that are local and convenient;
- identify how relevant stakeholders will receive information required in order for them to properly dismantle, transport, and treat the end-of-life solar modules; and
- include performance goals.

Beginning January 1, 2020, Ecology must enforce stewardship plans. Ecology must send a written warning to a manufacturer that is not participating in a plan and may assess a penalty of up to \$10,000 for each sale of a solar module in or into Washington by a manufacturer after the initial written warning. Penalties may be appealed to the Superior Court of Thurston County within 180 days of receipt of notice. Ecology may adopt rules necessary for implementing, administering, and enforcing the chapter.

Ecology may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process. Ecology may charge every manufacturer an annual fee calculated by dividing Ecology's administrative costs by the manufacturer's pro rata share of the Washington solar module sales in the most recent preceding calendar year, in order to predictably and adequately fund Ecology's costs of administering the Stewardship Program. All fees collected from manufacturers must be deposited in the solar module recycling account created in the custody of the State Treasurer the account.

A manufacturer may participate in a national program in lieu of preparing a stewardship plan under the state program, if Ecology determines that such participation is likely to achieve environmental outcomes in Washington that are substantially equivalent to those achieved by a departmentally-approved stewardship plan and is likely to be more cost-effective for the manufacturer. If a national program is discontinued or no longer provides equivalent environmental outcomes in the state, Ecology must notify the manufacturer and the manufacturer must submit a stewardship plan for approval within 30 days.

Sales Tax Incentives for Solar Equipment. The expiration date for existing renewable energy sales and use tax exemptions, as applied to solar photovoltaic systems of 500 kilowatts or less, is changed to June 30, 2016.

Production Incentive Program Data. System certifications and information contained therein are not confidential tax information and are subject to disclosure.

Consumer Protection. Any person who sells a solar module or receives compensation in exchange for installing a solar module in Washington must provide the customer-owner with

current information regarding the tax incentives available under current law, including the scheduled expiration dates and the length of time a customer may benefit from tax incentives. A violation is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, and may be enforced by the Attorney General under the Consumer Protection Act.

Contingent Expiration Date. Each section of this act expires immediately, contingent on Ecology adopting, adopting with revisions, or enforcing the proposed Clean Air Rule or adopts or enforces a rule that establishes a statewide program to set a limit, cap, or emissions standards designed to control the amount of greenhouse gas emissions. Ecology must provide notice of the expiration date to affected parties, the chief clerk of the House of Representatives, the secretary of the Senate, the Office of the Code Reviser, and others deemed appropriate.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Amendments): Aligns dates in for expiration of existing program, by changing May 31, 2016 to June 30, 2016. Clarifies that a "customer-owner" must be a customer of the utility. Clarifies that proportional reductions for existing program are backfilled, and allows existing customers to authorize the WSU Energy Program to coordinate payments to make whole the rates participants anticipated when they first received eligibility. Clarifies that incentive payments are capped at \$5,000 for a residential-scale system or individual participant in a community solar project. Clarifies that the WSU Energy Program must not issue new certifications to customers whose utility has exceeded their PUT cap.

Requires existing customers to authorize the WSU Energy Program to administer their certification as a condition for retaining certification and extends the date to do so until December 31, 2016, rather than July 15, 2016, or within 15 days of notice from DOR. Removes the additional data requirement for existing participants. Removes the recertification fee of \$75 from existing customers and increases the one-time fee for new customers to \$100.

Clarifies how the WSU Energy Program must establish a reporting fee-for-service system to accept electric production data from the utility or the customer to recover the program's costs of obtaining the electricity production data and incorporating it into an electric format. The fee may be deducted by the utility from the credit available to the utility. Removes the requirement that the WSU Energy Program must to deposit the revenue from the fee into the state general fund.

Requires any person who sells a solar module or receives compensation in exchange for installing a solar module to provide the customer-owner with current information regarding the tax incentives available under current law, including the scheduled expiration dates. A violation of this new section is an unfair or deceptive act or practice under the consumer protection act, except for entities subject to the jurisdiction of the UTC.

Adds an immediate expiration date, for each section, contingent on the department of ecology (a) adopting, adopting with revisions, or enforcing the proposed clean air rule; or (b) adopting or enforcing a rule that establishes a statewide program to set a limit, cap, or

emissions standard designed to control the amount of greenhouse gas emissions occurring during a period of time. Requires the department of ecology to provide notice of the expiration date to specific entities.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This is a solar bill that only deals with the production tax credit and no net metering. The bill has a ten-year return on investment which was original policy in 2005. We need to adjust rates to get more incentives out to others. This bill creates an economy based on solar. We must prepare ahead of time to have process put in place for a recycling program so we are not leaving it to our children to pay for the price tag of consumption. Clark County Public Utilities has seen signups in 2015 double the entire first 9 years of signups. In January the utility will have to start reducing subsidies because they have reached their cap. The current program is in need of adjustments to provide a smooth glide path out of program. The goal should be to keep existing customers whole. We'd prefer the solar rates to be closer to the original House bill, which were higher. It is appropriate for the WSU Energy Program to administer the bill. Changes to our state solar policy are urgently needed. The bill fixes many issues and encourages more renewable energy. Businesses have chosen to locate in Washington because of the incentives under the original bill. There is a cluster of solar activity in Washington and we hope to keep the success moving forward. The rates in the bill would not have a meaningful impact for wind turbines. Federal tax credit will not be extended for residential wind turbines. We want a level incentive rate for wind turbines and solar. The made-in-Washington incentives should be increased in the first few years to create a strong glide path for companies. Habitat for Humanity is the largest green home builder. We build efficient homes for low-income residents, and solar panels are a way for families to afford energy. The expiration clause might impact the passage of the bill.

OTHER: The recycling program is a very highly detailed, prescriptive program that is unworkable and not a reasonable approach. Conversations are happening at a national level about recycling. The provisions in the Engrossed bill are the correct path forward on recycling. The community solar rate is too low. It needs to be 42 cents. These customers don't get federal tax credit. Community solar projects are where you get the most bang for your buck. The fee is a burden on existing customers and they should not have to apply for recertification. WSU should stop certifications when a utility reaches their PUT cap. We want an effective, equitable program moving forward. Net metering total benefits vary across the state depending on the cost of electricity. We support increasing cap to make customers whole. We need to reduce the administrative costs that the utilities support now. Reporting should be to WSU and not the utility. We support the PUDs and a joint operating agency working together on solar. The annual cost for customer reporting needs clarification. The costs should not be borne by the utility, but by the customer causing these costs. Several co-ops have maxed out under the cap and are turning away new participants. Investor-

owned-utilities are exempt from the Consumer Protection Act. The solar incentive is an economic and energy diversification program. The continuing growth of solar makes it important to extend this program. The cost to the state is balanced with the expiration of sales tax exemptions. The bill should not be tied to the the Clean Air Rule.

Persons Testifying: PRO: Representative Morris, Prime Sponsor; Representative Smith, Co-Sponsor; Wayne Nelson, Clark Public Utilities/General Manager, CEO; Jeremy Smithson, Solar Installers of Washington; Reeves Clippart, A&R Solar; Sheila Riggs, Todd Currier, WSU Energy Program; Nelson Diems H.-R., Evergreen WashPIRG's Solar Campaign, Coalition Building Coordinator; Kelly Samson, AP Systems; Rich Phillips, PureSolar, Inc., President/CEO; Karl Unterschuetz, Itek Energy; Russ Woolsey, Vp Business Development; Dan Stanton, XZERES Corp; Daryl Daus, Habitat for Humanity; Frederic Mokren, Citizen.

OTHER: Jeff Gombosky, Energy Freedom Coalition of America; Leslie Moynihan, Snohomish PUD; Rose Feliciano, Seattle City Light; Lauren McCloy, WUTC; Tony Usibelli, Dept. of Commerce; Kent Lopez, Washington Rural Electric Cooperative Association (WRECA)/General Manager; Jaimes Valdez, Northwest Sustainable Energy for Economic Development; Charlie Brown, First Solar, Inc.; John Rothlin, Avista; Dave Warren, WA PUD Association.