

HOUSE BILL REPORT

ESSB 5939

As Passed House:
June 30, 2017

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: Senate Committee on Ways & Means (originally sponsored by Senators Ericksen and Palumbo).

Brief History:

Committee Activity:

None.

Third Special Session

Floor Activity:

Passed House: 6/30/17, 74-19.

Brief Summary of Engrossed Substitute Bill

- Closes the Renewable Energy Cost Recovery Incentive Payment Program to new customer participants after September 30, 2017.
- Authorizes a person that owns a renewable energy system, an administrator of a community solar project, or an administrator of a shared commercial solar project to apply to the Washington State University Extension Energy Program, beginning July 1, 2017, and ending June 30, 2020, for certification of eligibility to receive an annual production incentive payment under the Renewable Energy Production Incentive Program.
- Limits the statewide total amount of funds available for incentive payments made to customers under the Renewable Energy Production Incentive Program to \$110 million.
- Requires the Department of Ecology to establish a process to develop guidance for solar module stewardship plans by January 1, 2018.

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.

- Expires certain sales and use tax incentives for machinery and equipment used directly in solar energy or solar thermal energy systems on September 30, 2017.

Staff: Nikkole Hughes (786-7156).

Background:

Renewable Energy Cost Recovery Incentive Payment Program.

Under the Renewable Energy Cost Recovery Incentive Payment Program (Cost Recovery Program), an electric utility may claim a credit against its public utility tax obligations for incentive payments made by the utility to a customer for electricity produced by an eligible renewable energy system or community solar project. An eligible "renewable energy system" is a solar energy system, anaerobic digester, or wind generator that is installed on an individual, business, or local government electric customer's real property.

No credits may be claimed by an electric utility under the Cost Recovery Program after June 30, 2021.

Community Solar Projects.

Under the Cost Recovery Program, a "community solar project" is a solar energy system capable of generating up to 75 kilowatts of electricity that is:

- owned by local individuals, households, nonprofit organizations, or nonutility businesses and placed on local governmental property;
- owned by a utility and voluntarily funded by the utility's ratepayers in exchange for credits on their utility bills; or
- owned by a company and placed on local governmental property.

Cost Recovery Program Incentive Payments.

An individual, business, or local government that owns an eligible renewable energy system, or a participant in a community solar project, may apply to its electric utility for an investment cost recovery incentive payment (incentive payment) for each kilowatt-hour (kWh) of electricity produced by the system.

The base incentive payment rate for each actual kWh measurement of electricity from an eligible renewable energy system, regardless of system type, is 15 cents per kWh. The base rate is then multiplied by certain "economic development factors," determined by system type and whether the system or components of the system were manufactured in Washington. The highest incentive payment rate available for an eligible renewable energy system is 54 cents per kWh for a solar energy system with modules and an inverter manufactured in Washington.

The base incentive payment rate for each actual kWh measurement of electricity from a community solar project is 30 cents per kWh. The base rate is then multiplied by certain "economic development factors," determined by whether the system or components of the system were manufactured in Washington. The highest incentive payment rate available for a

community solar project is \$1.08 per kWh for a project with modules and an inverter manufactured in Washington.

No individual, household, business, local government, or participant in a community solar project may receive more than \$5,000 in incentive payments per year. No incentive may be paid for kWh generated after June 30, 2020.

Cap on Total Allowable Public Utility Tax Credits.

An electric utility may claim an annual credit of up to 0.5 percent of its taxable power sales or \$100,000, whichever is greater. 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. The credit cannot exceed the amount of tax owed by the utility, and cannot be refunded.

If requests for incentive payments exceed the amount of funds available for credit to the participating electric utility, the incentive payments must be reduced proportionately.

Administration of the Cost Recovery Program.

The Cost Recovery Program is administered by the Department of Revenue, with technical assistance from the Washington State University Extension Energy Program (WSU Energy Program).

Sales and Use Tax Incentives for Solar Equipment.

Until June 30, 2018, purchases of machinery and equipment used directly in solar energy systems that generate no more than 10 kilowatts of electricity are exempt from sales and use tax. Labor charges to install such equipment are also exempt.

Until June 30, 2018, purchases of machinery and equipment used directly in solar thermal energy systems that produce no more than 3 million British thermal units per day are exempt from sales and use tax. Labor charges to install such equipment are also exempt.

Until January 1, 2020, purchases of machinery and equipment used directly in solar energy systems that generate more than 10 kilowatts of electricity, or in other qualified renewable energy systems that generate at least 1 kilowatt of electricity, are eligible for a refund equal to 75 percent of the sales and use tax paid.

Summary of Bill:

Renewable Energy Cost Recovery Incentive Payment Program.

The Renewable Energy Cost Recovery Incentive Payment Program (Cost Recovery Program) is closed to new customer participants after September 30, 2017. A customer who enters the program by this date must apply to the WSU Energy Program by April 30, 2018, in order to continue to receive their incentive payment allowed under the Cost Recovery Program for electricity generated by a renewable energy system through June 30, 2020.

Beginning October 1, 2017, administration of the Cost Recovery Program is transferred from the Department of Revenue (DOR) to the Washington State University Extension Energy

Program (WSU Energy Program). The WSU Energy Program must, beginning July 1, 2018, calculate for the year and provide to a participating utility the amount of the incentive payment due to each participant under the Cost Recovery Program.

Renewable Energy Production Incentive Program.

Beginning July 1, 2017, under the Renewable Energy Production Incentive Program (Production Incentive Program), a person that owns a renewable energy system, an administrator of a community solar project, or a utility or business under contract with a utility that administers a shared commercial solar project, may apply to the WSU Energy Program for certification establishing the applicant's eligibility to receive an annual production incentive payment for each kilowatt-hour (kWh) of alternating current electricity generated by the system.

Eligible renewable energy systems include residential-scale and commercial-scale anaerobic digesters, wind generators, and solar energy systems. "Residential-scale" means a renewable energy system or systems with a combined nameplate capacity of 12 kilowatts or less. "Commercial-scale" means a renewable energy system or systems, other than a community solar project, with a combined nameplate capacity of greater than 12 kilowatts.

No certification may be issued under the Production Incentive Program after June 30, 2021.

Community Solar Projects.

Under the Production Incentive Program, a "community solar project" is a solar energy system that has a direct current nameplate generating capacity no greater than 1,000 kilowatts. A community solar project that has a generating capacity greater than 500 kilowatts must be subject to a standard interconnection agreement with the utility serving the situs of the project. A community solar project must be administered by a utility, nonprofit organization, or local housing authority and must have at least 10 participants or one participant for every 10 kilowatts of direct current nameplate capacity, whichever is greater. Except for community solar projects administered in cooperation with a joint operating agency, each participant must be a customer of the utility providing service at the situs of the community solar project.

The administrator of a community solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project.

The Utilities and Transportation Commission (UTC) must publish, without disclosing proprietary information, a list of:

- entities other than utilities that organize and administer community solar projects; and
- community solar projects and related programs and services offered by investor-owned utilities.

If a consumer-owned utility opts to provide a community solar program or contracts with a nonutility administrator to offer a community solar program, the governing body of the consumer-owned utility must publish, without disclosing proprietary information, a list of the nonutility administrators contracted by the utility as part of its community solar program.

Violation of the reporting and disclosure requirements for administrators of community solar projects is a violation of the Consumer Protection Act.

Shared Commercial Solar Projects.

A "shared commercial solar project" is a solar energy system, owned or administered by an electric utility, with a combined nameplate capacity between one and five megawatts. A shared commercial solar project must have at least five participants. In order to receive an incentive payment under the Production Incentive Program, a participant must be a customer of the utility providing service at the situs of the shared commercial solar project and must be located in the state of Washington. A participant in a shared commercial solar project may not receive incentive payments associated with the project greater than the difference between the levelized cost of the energy output of the system over its production life and the retail rate for the rate class to which the customer belongs.

The administrator of a shared commercial solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project. If a utility opts to contract with a nonutility administrator to offer a shared commercial solar program, the utility must publish the name of the nonutility administrator contracted by the utility.

In the event that the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator of a shared commercial solar project must submit to the WSU Energy Program the reasons for using out-of-state contractors, the percentage of installation work performed by out-of-state contractors, and a cost comparison of the installation services performed by out-of-state contractors against the same services performed by Washington-based contractors.

Production Incentive Certification and Payments.

Certification of eligibility under the Production Incentive Program is valid for the program term. "Program term" for a community solar project, shared commercial solar project, or any other renewable energy system means eight years, or until cumulative incentive payments for electricity produced by the project reach 50 percent of the total system price (including applicable sales tax), whichever occurs first.

The applicant or, in the case of a community solar project or shared commercial solar project, the participant is entitled to receive incentive payments for electricity generated for the program term from the date the renewable energy system commences operation.

The incentive rate available depends on the fiscal year of certification, the system type, and whether the system is eligible for a made-in-Washington bonus rate. A renewable energy system or community solar project is eligible for a made-in-Washington bonus rate if its solar modules, wind turbine, or tower is made in Washington. The incentive rates available under the Production Incentive Program are as follows:

Fiscal year of system certification	Base rate - residential-scale	Base rate - commercial-scale	Base rate - community solar	Base rate - shared commercial solar	Made-in-Washington bonus rate
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05

2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

No person, business, or household is eligible to receive production incentive payments of more than:

- \$5,000 per year for residential-scale systems or community solar projects;
- \$25,000 per year for commercial-scale systems; or
- \$35,000 per year for shared commercial solar projects.

The WSU Energy Program must cease to issue new certifications:

- for community solar projects and shared commercial solar projects in any fiscal year for which 50 percent of the funds available to a utility as of July 1, 2017, have been allocated to community solar projects and shared commercial solar projects combined;
- for commercial-scale systems in any fiscal year for which 25 percent of the funds available to a utility as of July 1, 2017, have been allocated to commercial-scale systems;
- for any renewable energy system served by a utility if certification is likely to result in incentive payments exceeding the utility's available funds for credit; and
- for any renewable energy system if certification is likely to result in total incentive payments made under the Production Incentive Program exceeding \$110 million.

Public Utility Tax Credits.

An electric utility may claim a credit against its public utility tax obligations for incentive payments made by the utility to a customer under the Cost Recovery Program or the Production Incentive Program.

An electric utility may claim an annual credit of up to 1.5 percent of its taxable power sales generated in calendar year 2014 or \$250,000, whichever is greater. The credit cannot exceed the amount of tax owed by the utility, and cannot be refunded.

No credits may be claimed by an electric utility under the Cost Recovery Program after June 30, 2021. No credits may be claimed by an electric utility under the Production Incentive Program after June 30, 2030.

Effect of Previous Cost Recovery Program Participation.

A system that was certified under the Cost Recovery Program cannot be certified under the Production Incentive Program. The WSU Energy Program may issue a new certification for an additional system installed at a location with a previously certified system so long as the new system meets eligibility requirements under the Production Incentive Program and its production can be measured separately from the previously certified system. The WSU Energy Program may also issue a recertification for a residential-scale or commercial-scale system if a customer makes investments resulting in an expansion of the system's nameplate capacity.

Community Solar Companies.

No community solar company may engage in business in the state or apply to the WSU Energy Program for certification under the Production Incentive Program without first registering with the UTC. The UTC is authorized to adopt rules that describe the manner by which it will register a community solar company. Failure of a community solar company to register with the UTC constitutes an unfair or deceptive act in trade or commerce in violation of the Consumer Protection Act.

"Community solar company" means a person, firm, or corporation, other than an electric utility or a community solar cooperative, that owns a community solar project and provides community solar project services to project participants.

Legislative Review of the Production Incentive Program.

By November 1, 2019, the WSU Energy Program must submit a report to the legislature that provides information pertaining to the Production Incentive Program, including but not limited to:

- the number of utilities that are approaching their public utility tax credit limit;
- an assessment of the deployment of community solar projects in the state; and
- the total dollar amount of incentive payments that have been made to participants in the Production Incentive Program.

By December 31, 2019, the legislature must review the report and determine whether the per-utility public utility tax credit limit should be increased to 2 percent of an electric utility's taxable power sales generated in calendar year 2014 or \$250,000, whichever is greater.

Photovoltaic Module Recycling.

By January 1, 2018, the Department of Ecology (Department) must establish a process to develop guidance for photovoltaic module stewardship plans by working with manufacturers, stewardship organizations, and other stakeholders on the content, review, and approval of stewardship plans. The Department's process must be fully implemented and stewardship guidance must be completed by July 1, 2019.

Beginning January 1, 2021, no manufacturer may sell or offer for sale a photovoltaic module, in or into the state, unless the manufacturer has submitted a stewardship plan to the Department and has received plan approval.

Washington State Housing Finance Commission.

The Washington State Housing Finance Commission (WSHFC) must submit a report to the Legislature by December 31, 2017, that assesses financing tools or models for the aggregation, by public or private entities, of federal tax incentives and other financial benefits accruing from the installation, ownership, and operation of renewable energy systems and other distributed energy resources.

Beginning July 1, 2018, the WSHFC may implement a financing tool or model for the aggregation of federal tax incentives and other financial benefits associated with renewable energy systems and distributed energy resources if the WSHFC determines that it is legally, financially, and economically feasible.

Sales and Use Tax Incentives for Solar Equipment.

Certain sales and use tax incentives for machinery and equipment used directly in solar energy or solar thermal energy systems expire September 30, 2017.

Appropriation: None.

Fiscal Note: Available.

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