

SENATE BILL REPORT

ESHB 2248

As Reported by Senate Committee On:
Ways & Means, March 9, 2020

Title: An act relating to expanding equitable access to the benefits of renewable energy through community solar projects.

Brief Description: Expanding equitable access to the benefits of renewable energy through community solar projects.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Doglio, DeBolt, Fey, Lekanoff, Fitzgibbon, Shewmake, Leavitt, Ramel, Ryu, Tarleton, Appleton, Ramos, Slatter, Ormsby, Macri, Wylie, Kloba, Goodman, Peterson, Hudgins, Pollet and Tharinger).

Brief History: Passed House: 2/27/20, 88-10.

Committee Activity: Ways & Means: 3/02/20, 3/09/20 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Terminates the application period for the Renewable Energy Production Incentive Program (Production Incentive Program) on June 30, 2020, rather than June 30, 2021.
- Authorizes, beginning July 1, 2020, and through June 30, 2026, an administrator of an eligible community solar project to apply to the Washington State University Extension Energy Program for certification of eligibility to receive a one-time energy burden reduction incentive payment from a participating electric utility on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers (the Community Solar Expansion Program).
- Creates a new public utility tax credit in an amount equal to the energy burden reduction incentive payments paid by an electric utility under the Community Solar Expansion Program.
- Establishes new community solar project eligibility requirements under the Community Solar Expansion Program.
- Amends the incentive rates for renewable energy systems certified under the Production Incentive Program.

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.

- Caps total incentive payments allowed for community solar projects certified under the Community Solar Expansion Program at \$20 million.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Becker, Hasegawa, Muzzall, Schoesler, Warnick and Wilson, L..

Staff: Jeffrey Mitchell (786-7438)

Background: Renewable Energy Production Incentive Program. In 2005, the Renewable Energy Cost Recovery Incentive Payment Program (Legacy Program) was created to allow an individual, business, or local government that owns an eligible renewable energy system to apply to its electric utility for an investment cost recovery incentive payment for each kilowatt-hour (kWh) of electricity produced by the system. In 2009 the Legacy Program was expanded to include community solar projects. In 2017, ESSB 5939 directed the Washington State University Extension Energy Program (WSU Energy Program) to launch and administer a new program known as the Renewable Energy Production Incentive Program (Production Incentive Program).

The Legacy Program closed to new customer participants after September 30, 2017. A customer who entered the program by this date was required to apply to the WSU Energy Program by April 30, 2018, to continue to receive their incentive payment allowed under the Legacy Program for electricity generated by a renewable energy system through June 30, 2020.

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

Under the Production Incentive Program, the WSU Energy Program is directed to cease issuing new certifications for any renewable energy system if certification is likely to result in total incentive payments made under the Production Incentive Program in excess of \$110 million. Although the application period under the Production Incentive Program extends to June 30, 2021, because of the \$110 million statewide incentive payment cap, the WSU

Energy Program does not intend to review any applications for certification received after June 14, 2019.

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 site 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 site 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.

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 outlined in the following table.

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.

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

World Trade Organization Panel Report. On September 9, 2016, India requested consultations with the United States regarding domestic content requirements and incentives for renewable energy systems instituted by state governments, including Washington. The request for consultations specifically named Washington's Legacy Program as it existed in 2016.

On June 27, 2019, a World Trade Organization (WTO) panel issued a report finding that the made-in-Washington incentives under the Legacy Program are inconsistent with Article III, section 4 of the General Agreement on Tariffs and Trade (GATT) 1994, because they provide an advantage for the use of domestic products, which amounts to less favorable treatment for similar imported products. The panel recommended that the WTO's dispute settlement body request the United States to bring the incentives provided under the Legacy Program into conformity with its obligations under the GATT 1994.

The panel report also found that the made-in-Washington bonus rate provided under the Production Incentive Program established in 2017 does not represent an amendment to the bonus rate under the Legacy Program, but is instead a distinct measure that falls outside the terms of the panel's reference, and thus was not included in the panel's review or recommendations.

Summary of Amended Bill: Renewable Energy Production Incentive Program. The application period for the Production Incentive Program terminates June 30, 2020, rather than June 30, 2021.

If a community solar project application is in precertification status under the Production Incentive Program as of June 30, 2020, the project applicant must continue in that status until it is certified by the WSU Energy Program or its precertification expires.

Community solar projects that are in precertification status under the Production Incentive Program as of June 30, 2020, may not apply for precertification for that same project under the Community Solar Expansion Program that begins July 1, 2020.

Community Solar Expansion Program. Beginning July 1, 2020, through June 30, 2026, an administrator of an eligible community solar project may submit an application to the WSU Energy Program to receive a precertification for the project. Projects with precertification applications approved by the WSU Energy Program have two years to complete their projects and apply for full certification. By certifying qualified projects, the WSU Energy Program authorizes the utility serving the site of a community solar project in the state to remit a one-time energy burden reduction incentive payment to the community solar project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

"Qualifying subscriber" means a low-income subscriber, low-income service provider subscriber, tribal agency subscriber, or public agency subscriber.

An energy burden reduction incentive payment equals the sum of:

- an amount, not to exceed \$20,000, equal to the community solar project's administrative costs related to administering the project for qualifying subscribers; and
- an amount equal to 100 percent of the proportional cost of the share of the community solar project that provides direct benefits to qualifying subscribers.

A utility's participation in the Community Solar Expansion Program is voluntary.

The WSU Energy Program may issue certifications authorizing energy burden reduction incentive payments in a total statewide amount not to exceed \$20 million and subject to the following dollar limits:

- for fiscal year 2021, \$300,000; and
- for each biennium beginning on or after July 1, 2021, \$5 million.

The WSU Energy Program must equitably distribute incentive funds. If an equitable distribution of funds is not feasible due to the lack of precertification applications, funds may be allocated on a first-come, first-served basis.

Prior to obtaining certification, the administrator of an eligible community solar project must apply for precertification against the funds available for incentive payments under the Community Solar Expansion Program in order to be guaranteed an energy burden reduction incentive payment. The application for precertification must include, at a minimum:

- a project prospectus that demonstrates how the administrator intends to provide direct benefits to qualifying subscribers for the duration of their subscription to the community solar project; and
- any other information the WSU Energy Program deems necessary in determining eligibility for precertification.

The WSU Energy Program must collect a one-time fee for precertification applications of \$500 per applicant. The WSU Energy Program must deposit all revenue from this fee into the state general fund.

Within 60 days of receipt of a notification of project certification from the WSU Energy Program, the utility serving the site of the certified community solar project must remit the applicable energy burden reduction incentive payment to the project administrator.

No certification may be issued by the WSU Energy Program under the Community Solar Expansion Program after June 30, 2026.

Community Solar Project Eligibility Requirements. To receive certification for an energy burden reduction incentive payment beginning July 1, 2020, a community solar project must meet certain requirements, including:

- the administrator of the community solar project must be a utility, nonprofit, or other local housing authority;
- the community solar project must have an alternating current nameplate capacity greater than 12 kilowatts but no greater than 199 kilowatts, and must have at least two subscribers or one low-income service provider subscriber; and
- verification that an individual household subscriber meets the definition of low-income must be provided to the administrator by an entity with authority to maintain the confidentiality of the income status of the low-income subscriber.

Public Utility Tax Credits. Beginning July 1, 2020, an electric utility is allowed a credit against its public utility tax (PUT) obligations in an amount equal to energy burden reduction incentive payments made under the Community Solar Expansion Program.

The PUT credit for the fiscal year may not exceed 1.5 percent of the business's taxable power sales generated in calendar year 2014 or \$250,000, whichever is greater. The credit may not exceed the tax that would otherwise be due. Refunds may not be granted in place of credits.

The right to earn PUT credits for energy burden reduction incentive payments expires June 30, 2034. Credits may not be claimed after June 30, 2035.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Allows precertified shared commercial projects as well as community solar projects under the Renewable Energy Production Incentive Program to continue in that status until they are certified by the Washington State University (WSU) energy program by December 31, 2021.

- Clarifies that the compensation for the generation of electricity from a community solar project that is no greater than 100 hundred kilowatts must be provided to the metered customer receiving service at the situs of the meter.
- Clarifies that for all other community solar projects in the community solar incentive program, compensation must be determined at a value set by the participating utility and paid to the administrator or subscribers according to the project agreement.
- Requires that annually by March 1st, for ten years after project certification, the provider of compensation for the generation of electricity to the subscriber—either the utility or the administrator—must provide the WSU Energy Program with specified information for the preceding year.
- Requires the WSU Energy Program to equally distribute incentive funds, and may consider measures to reserve or allocate available funds based on the proportion of public utility taxes collected, the proportion of the state's low-income customers' served by each utility, geographic distribution of community solar installations, and diversity of administrative models. If an equitable distribution of funds is not feasible due to lack of precertification applications, funds may be allocated on a first-come, first-served basis.
- Requires the WSU Energy Program to regularly publish and update guidelines for how it will manage the allocation of available funding.
- Requires that a project administrator's required signed statement must include the incentive amount and the distribution of estimated benefits to qualifying subscribers.
- Makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: To access residential solar, a person must own a home, be in a sunny location, have a well-oriented roof, and be able to afford the cost. Due to these requirements, the vast majority of Washington residents do not have access to residential solar. Multiple customers can participate in a community solar system across a wide geography. This bill addresses the upfront cost barriers for community solar projects and will provide tangible benefits when the electricity is produced. We think targeting low-income communities is the best use of state funding.

Persons Testifying: PRO: Dave Warren, Olympia Community Solar; Mason Rolph, Olympia Community Solar; Laura Wilkeson, Puget Sound Energy; Clark McIsaac, Snohomish PUD.

Persons Signed In To Testify But Not Testifying: No one.