SENATE BILL REPORT
SB 5714

As of February 17, 2022

Title: An act relating to creating a sales and use tax deferral program for solar canopies placed on large-scale commercial parking lots and other similar areas.

Brief Description: Creating a sales and use tax deferral program for solar canopies placed on large-scale commercial parking lots and other similar areas.

Sponsors: Senators Carlyle, Liias, Gildon, Lovelett, Mullet, Nguyen and Rolfes.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/13/22, 1/27/22 [DPS-WM, DNP].

Ways & Means: 2/17/22.

Brief Summary of First Substitute Bill

- Defers state and local sales and uses taxes on a qualified solar canopy, including labor and services rendered in the planning, installation, and construction of the project, that is located in a qualifying commercial center.
- Requires that a qualified solar canopy be at least 50,000 square feet and be capable of producing at least one megawatt of electricity.
- Reduces the amount of state sales and use tax to be repaid if the recipient complies with specified labor standards.
- Directs the Department of Revenue to stop accepting new applications for the deferral after June 30, 2032.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5714 be substituted therefor, and the

substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Lovick, Nguyen, Sheldon, Stanford and Wellman.

Minority Report: Do not pass.
Signed by Senators Short, Ranking Member; Brown, Fortunato and Schoesler.

Staff: Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jeffrey Mitchell (786-7438)

Background: Retail Sales and Use Taxes. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. The use tax is imposed on items used in the state that were not subject to the retail sales tax. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Greenhouse Gas Emissions. In 2020, the Legislature updated statewide greenhouse gas (GHG) emissions reduction limits to 45 percent below 1990 levels by 2030, 70 percent below 1990 levels by 2040, and 95 percent below 1990 levels, as well as net zero emissions, by 2050.

The Department of Ecology (Ecology) and the Department of Commerce must report the total GHG emissions, by source sector, in Washington State. According to the most recent data from Ecology, as of 2018 the total annual GHG emissions in Washington State were 99.6 million metric tons (MMT) of carbon dioxide equivalent. Of these emissions, 16.21 MMT, or 16.3 percent, were attributable to electricity sources.

Solar Energy Systems. Under current law, a solar energy system means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity. According to the Washington State University (WSU) Energy Extension Program, of the 7542 systems certified under the Renewable Energy System Incentive Program, 7146 were residential-scale solar systems.

Summary of Bill (First Substitute): The Legislature intends to incentivize the construction of solar canopies on large-scale commercial parking lots in order to contribute to the state's goals for reducing GHG emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and buildings.

State and Local Sales and Use Tax Deferral for Solar Canopies. The Department of Revenue (DOR) must issue a sales and use tax deferral certificate for state and local sales and uses taxes on an eligible investment project.

An eligible investment project (project) is an investment in a qualified solar canopy, including labor and services rendered in the planning, installation, and construction of the project, that is located in a qualifying commercial center. A qualified solar canopy is a new elevated structure, or multiple structures, containing a solar energy system with a nameplate capacity of at least one megawatt (MW) of alternating current and has an area of at least 50,000 square feet. A qualifying commercial center is a property currently used for retail, industrial, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

An application for deferral of taxes must be made to DOR before initiation of the construction of the project. The application must be made in a form and manner prescribed by DOR, and contain information regarding the location of the project, estimated or actual costs, time schedules for completion and operation, and anticipated nameplate capacity and use of the electricity produced by the solar canopy. DOR must rule on the application within 60 days. DOR may not accept applications for a tax deferral after June 30, 2032.

<u>Repayment of Deferred Taxes.</u> The recipient of a deferral certificate must begin meaningful construction on a project within one year of receiving the certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered such a circumstance. If the recipient does not begin meaningful construction within one year, the certificate is invalid and the deferred taxes are due immediately. At the time of completion, if the solar canopy will produce an amount of electricity that is less than 85 percent of the nameplate capacity originally assumed in the application, the recipient must update DOR. Each recipient of a tax deferral must file a complete annual tax performance report with DOR as required under current law beginning the first calendar year after the project is operationally complete and continue through final repayment.

The recipient of the tax deferral must receive a reduction of the amount of state sales and use taxes to be repaid as follows:

- 50 percent if the procurement and contract was from an organization owned by women, minorities, or veterans, and entities that have a history of complying with federal and state wage and hour laws; apprenticeship utilization; and preferred entry workers living in the project construction area;
- 75 percent if, in addition to the previous standard, workers on the project were compensated at prevailing wages determined by local collective bargaining; or
- 100 percent if the project is developed under a community workforce agreement or project labor agreement.

Unless the recipient receives a reduction of the amount of state sales and use taxes to be repaid under the specified labor provisions, the recipient of the tax deferral must begin repaying the deferred taxes in the second year after the project is operationally complete. The first payment is 12.5 percent of deferred taxes, and subsequent annual payments of 12.5

percent are due on December 31 for each of the following seven years. If the project is not operationally complete within two years of being issued the tax deferral certificate, or DOR finds that a project is not connected to the electrical grid and producing solar energy during the year the project was certified as being operational or for any of the seven succeeding calendar years, a portion of deferred taxes is due according to a declining schedule.

DOR must assess interest at the rate provided for delinquent taxes retroactively to the date of deferral. Debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. If ownership is transferred, the deferral is also transferred subject to the successor meeting the eligibility requirements for the remaining period of the deferral.

Joint Legislative Audit and Review Committee Review. The Joint Legislative Audit and Review Committee (JLARC) must review the sales and use tax deferral by December 31, 2030. The review must specifically evaluate:
- the number of solar canopies constructed in the state subject to the tax deferral;
- the average and total electric output of solar canopies subject to the tax deferral;
- the total beneficiary savings from the tax preference;
- the estimated reduction in GHG emissions resulting from energy produced from solar canopies, assuming an equivalent amount of energy would have otherwise been generated through the combustion of fossil fuels; and
- any other metrics JLARC finds relevant to the evaluation of the tax preference in meetings its public policy objectives.

JLARC must use the information from the application compiled by DOR and may contact recipients of the tax deferral to confirm details of their solar canopies.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

Provides that the recipient of the tax deferral must receive a reduction of the amount of state and local sales and use taxes to be repaid as follows:
- 50 percent if the procurement and contract was from an organization owned by women, minorities, or veterans, and several other labor standards;
- 75 percent if, in addition to the previous standard, workers on the project compensated at prevailing wages determined by local collective bargaining; or
- 100 percent if the project is developed under a community workforce agreement or project labor agreement.

Requires the recipient of the tax deferral to begin repaying the deferred taxes in the second year after the project is operationally complete; the first payment is 12.5 precent, and subsequent annual payments of 12.5 percent are due on December 31 for each of the following 7 years, rather than exempting the taxes after 8 years.

Clarifies that taxes are due immediately if DOR finds that a project is not connected to the grid and producing solar energy at any time during the calendar year in which the investment project is certified as being operationally complete or at any time during the succeeding calendar years.

Requires the recipient of the tax deferral to file a complete annual tax performance report.

Amends, adds, or removes definitions, including clarifying that a "solar canopy" contains a solar energy system with a nameplate capacity of at least one megawatt of alternating current. "Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2022.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides motivation to accelerate solar in under-utilized large parking lots in urban areas, which are close to load. Cities need to be better about their production of electricity. Climate change is a threat to all of us, including birds. We want to protect habitat and green spaces. Much of the investment in solar has been in rural areas where it is cheap to build, but we would like to build out solar in the built environment. We will need other planning and guidance, but this is a step forward. This is a simple bill with big possibilities. It will provide more energy on the grid, shade in summer, cover in winter, and protect natural landscapes. It will help the state reach its goals to decarbonize electricity under the Clean Energy Transformation Act (CETA). Please consider the adoption of CETA labor standards in the bill.

OTHER: Urban areas already have zero emissions, whether we add solar or not. There are other more effective ways to meet CETA. Solar is the most expensive and yields the least amount of energy. Western Washington is the worst place for solar energy. This is a subsidy to solar installers and not an effective climate policy. We should purchase renewable energy credits from other places where solar is more efficient and use the $50 million to reduce carbon dioxide in other projects.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Reuven Carlyle, Prime Sponsor; Adam Maxwell, Audubon Washington; Matthew Hepner, IBEW/ceww.

OTHER: Todd Myers, Washington Policy Center.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: The use of parking lots is a significant opportunity from an efficiency standpoint relative to solar canopies, which are a growing global best practice. This is an idea from the climate summit in Glasgow, Scotland. The average Walmart store has a 5 acre parking lot. If a 1 acre canopy was put on every parking lot in the country for these stores it would be over 11 gigawatts of power, which is equivalent to 12 large coal-fired power plants. This is about using urban and suburban areas more efficiently. Integration with the grid is also high value with respect to electric vehicles. There is a strong emerging trend for solar canopies in not only sun-belt states but Germany and elsewhere around the world.

CON: This bill mandates union-only contractors, which we strongly oppose. The government should not be mandating certain types of contractors for private businesses. Half of the taxpayers in the construction would not be able to participate in these projects, which is not fair. The labor agreement language is totally unnecessary. Many smaller contractors will not be able to bid on these projects. Many minority and women-owned businesses operate as nonunion contractors.

Persons Testifying (Ways & Means): PRO: Senator Reuven Carlyle, Prime Sponsor.

CON: Jerry Vanderwood, Associated General Contractors of Washington; Sophia Steele, Associated Builders and Contractors of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.