

FINAL BILL REPORT

ESSB 5714

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Synopsis as Enacted

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: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Carlyle, Liias, Gildon, Lovelett, Mullet, Nguyen and Rolfes).

Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means
House Committee on Finance

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)

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Energy Extension Program, of the 7542 systems certified under the Renewable Energy System Incentive Program, 7146 were residential-scale solar systems.

Summary: 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.

Repayment of Deferred Taxes. 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.

The Department of Labor and Industries (L&I) must adopt emergency and permanent rules to define and set minimum requirements for the tiered labor standards. L&I must also set requirements for good faith efforts under the 50 and 75 percent state sales and use tax reduction categories.

The standards for procurement from and contracts with woman and minority-owned businesses requires the recipient of the deferral to consult with the Office of Minority and Women's Business Enterprises. The recipient of the deferral must consult with the Department of Veterans Affairs under the standards for procurement from and contract with veteran-owned businesses. L&I must consult with the Office of Minority and Women's Business Enterprises, Department of Veterans Affairs, and Washington Apprenticeship and Training Council in setting standards and good faith efforts.

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 31st 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 meeting 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.

Votes on Final Passage:

Senate	29	19
House	57	40

Effective: July 1, 2022