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**SUBSTITUTE SENATE BILL 5714**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle, Lias, Gildon, Lovelett, Mullet, Nguyen, and Rolfes)

READ FIRST TIME 01/28/22.

1 AN ACT Relating to creating a sales and use tax deferral program  
2 for solar canopies placed on large-scale commercial parking lots and  
3 other similar areas; adding a new chapter to Title 82 RCW; and  
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that while  
7 Washington state has significant solar resources and increasing  
8 electricity generation from solar installations, these are  
9 concentrated in rooftop installations and in utility-scale solar  
10 projects on rural lands that could otherwise be devoted to crop  
11 lands, grazing lands, or other productive uses. A recent study  
12 estimates that in the United States about 51 percent of utility-scale  
13 solar facilities are in deserts, 33 percent are on croplands, 10  
14 percent are in grasslands and forests, and only 2.5 percent of solar  
15 power comes from urban areas.

16 (2) The legislature further finds that in urbanized areas the  
17 land devoted to transportation, both moving and parking vehicles, is  
18 substantial and becomes unavailable for additional uses. Surface  
19 parking lots that serve large commercial, industrial, and residential  
20 institutional developments present an opportunity for solar power on  
21 parking lot canopies to gain added benefits for the use of this land.

1 Solar canopies would significantly contribute to the state's goals of  
2 reducing greenhouse gas emissions from the electricity sector and  
3 boost overall electricity supplies as the state increases the  
4 electrification of transportation and powering and heating buildings.  
5 Additionally, solar canopies provide weather protection in summer and  
6 winter to both the vehicles under the canopies and people moving from  
7 their cars into the buildings served by the parking lot.

8 (3) The legislature further finds that the initial capital costs  
9 of installing solar generation on parking lot canopies will in most  
10 cases be fully amortized over time with the power generated and sold  
11 into the electricity system, but that initial capital costs may deter  
12 incorporation of installations into new projects. For these reasons,  
13 the legislature intends to provide for a deferral of state and local  
14 sales and use taxes for eligible costs of the construction of a solar  
15 canopy at qualifying commercial centers.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires  
18 otherwise.

19 (1) "Applicant" means a person applying for a tax deferral under  
20 this chapter.

21 (2) "Eligible area" means a qualifying commercial center.

22 (3) "Eligible investment project" means an investment project  
23 that is located, as of the date the application required by section 3  
24 of this act is received by the department, in an eligible area.

25 (4)(a) "Initiation of construction" means the date that a  
26 building permit is issued under the building code adopted under  
27 RCW 19.27.031 for:

28 (i) Construction of the eligible investment project, if the  
29 underlying ownership of the building vests exclusively with the  
30 person receiving the economic benefit of the deferral;

31 (ii) Construction of the eligible investment project, if the  
32 economic benefits of the deferral are passed to a lessee as provided  
33 in section 8 of this act; or

34 (iii) Tenant improvements for the eligible investment project, if  
35 the economic benefits of the deferral are passed to a lessee as  
36 provided in section 8 of this act.

37 (b) "Initiation of construction" does not include soil testing,  
38 site clearing and grading, site preparation, or any other related

1 activities that are initiated before the issuance of a building  
2 permit for the construction of the foundation of the building.

3 (c) If the investment project is a phased project, "initiation of  
4 construction" applies separately to each phase.

5 (5) "Investment project" means an investment in a qualified solar  
6 canopy including labor and services rendered in the planning,  
7 installation, and construction of the project.

8 (6) "Meaningful construction" means an active construction site,  
9 where excavation of a building site, laying of a structure  
10 foundation, or other tangible signs of construction are taking place  
11 and that clearly show a progression in the construction process at  
12 the location designated by the taxpayer in the application for  
13 deferral. Planning, permitting, or land clearing before excavation of  
14 the building site, without more, do not constitute "meaningful  
15 construction."

16 (7) "Operationally complete" means the solar canopy has received  
17 its final electrical inspection and is connected to the electrical  
18 grid.

19 (8) "Person" has the meaning given in RCW 82.04.030.

20 (9) "Qualified solar canopy" means construction of a new solar  
21 canopy that has an area of at least 50,000 square feet.

22 (10) "Qualifying commercial center" means a property currently  
23 used for retail, industrial, office, or other commercial purposes,  
24 containing a parking area or other area dedicated for both vehicle  
25 use and placement of a solar canopy.

26 (11) "Recipient" means a person receiving a tax deferral under  
27 this chapter.

28 (12)(a) "Solar canopy" means an elevated structure, or multiple  
29 structures, containing a solar energy system, as defined in RCW  
30 82.16.110, with a nameplate capacity of at least one megawatt of  
31 alternating current.

32 (b) "Solar canopy" includes the solar energy system, power lines,  
33 and any equipment required to connect the solar canopy to the  
34 electrical grid.

35 NEW SECTION. **Sec. 3.** (1) Application for deferral of taxes  
36 under this chapter must be made before initiation of the construction  
37 of the investment project. The application must be made to the  
38 department in a form and manner prescribed by the department. The  
39 application must contain information regarding the location of the

1 investment project, estimated or actual costs, time schedules for  
2 completion and operation, anticipated nameplate capacity and use of  
3 the electricity produced by the solar canopy, and other information  
4 required by the department. The department must rule on the  
5 application within 60 days. The department must compile this  
6 information for use by the joint legislative audit and review  
7 committee in its evaluation of the tax preference under section 9 of  
8 this act.

9 (2) The department may not accept applications for the deferral  
10 under this chapter after June 30, 2032.

11 NEW SECTION. **Sec. 4.** The department must issue a sales and use  
12 tax deferral certificate for state and local sales and use taxes due  
13 under chapters 82.08, 82.12, and 82.14 RCW on each eligible  
14 investment project.

15 NEW SECTION. **Sec. 5.** (1) The recipient of a deferral  
16 certificate under section 4 of this act must begin meaningful  
17 construction on an eligible investment project within one year of  
18 receiving a deferral certificate, unless construction was delayed due  
19 to circumstances beyond the recipient's control. Lack of funding is  
20 not considered a circumstance beyond the recipient's control.

21 (2) If the recipient does not begin meaningful construction on an  
22 eligible investment project within one year of receiving a deferral  
23 certificate, the deferral certificate issued under section 4 of this  
24 act is invalid and taxes deferred under this chapter are due  
25 immediately.

26 (3) A recipient of a deferral certificate under section 4 of this  
27 act must notify the department and update the information originally  
28 provided in the application if the solar canopy, at the time of  
29 completion, will produce an amount of electricity that is less than  
30 85 percent of the nameplate capacity originally assumed.

31 (4) Each recipient of a deferral of taxes under this chapter must  
32 file a complete annual tax performance report with the department  
33 under RCW 82.32.534 for the year the solar canopy is certified as  
34 operationally complete and for the subsequent seven years. If the  
35 solar canopy ceases to be connected to the electrical grid, the  
36 annual tax performance report is no longer required beginning on the  
37 date the solar canopy was disconnected from the electrical grid.

1        NEW SECTION.    **Sec. 6.**    Except as otherwise provided in this  
2 chapter, the recipient of the deferral under this chapter must  
3 receive a reduction of the amount of state and local sales and use  
4 tax to be repaid under this act as follows:

5        (1) Fifty percent of the sales and use tax deferred, if the  
6 department of labor and industries certifies that the eligible  
7 investment project includes procurement from and contracts with  
8 women, minority, or veteran-owned businesses; procurement from and  
9 contracts with entities that have a history of complying with federal  
10 and state wage and hour laws and regulations; apprenticeship  
11 utilization; and preferred entry for workers living in the area where  
12 the eligible investment project is being constructed. In the event  
13 that an eligible investment project is built without one or more of  
14 these standards, and a project developer or its designated principal  
15 contractor demonstrates that it has made all good faith efforts to  
16 meet the standards but was unable to comply due to lack of  
17 availability of qualified businesses or local hires, the department  
18 of labor and industries may certify that the developer complied with  
19 one or more standards;

20        (2) Seventy-five percent of the sales and use tax deferred, if  
21 the department of labor and industries certifies that the eligible  
22 investment project complies with subsection (1) of this section and  
23 compensates workers at prevailing wage rates as determined by the  
24 department of labor and industries; or

25        (3) One hundred percent of the sales and use tax deferred, if the  
26 department of labor and industries certifies that the eligible  
27 investment project is developed under a community workforce agreement  
28 or project labor agreement.

29        NEW SECTION.    **Sec. 7.**    (1) Except as otherwise provided in this  
30 chapter, the recipient must begin paying the deferred taxes in the  
31 second year after the date certified by the department as the date on  
32 which the eligible investment project has been operationally  
33 completed. The first payment of 12.5 percent of the deferred taxes is  
34 due on December 31st of the second calendar year after the certified  
35 date, with subsequent annual payments of 12.5 percent of the deferred  
36 taxes due on December 31st for each of the following seven years.

37        (2) The department may authorize an accelerated repayment  
38 schedule upon request of the recipient.

1 (3) If the investment project is not operationally complete  
2 within two calendar years from the issuance of the tax deferral  
3 certificate, or if, on the basis of the tax performance report under  
4 RCW 82.32.534 or other information, the department finds that an  
5 investment project is not connected to the electrical grid and  
6 producing solar energy at any time during the calendar year in which  
7 the investment project is certified by the department as having been  
8 operationally completed, or at any time during any of the seven  
9 succeeding calendar years, a portion of deferred taxes is immediately  
10 due according to the following schedule:

11	Year in which	Percent of deferred taxes
12	use occurs	due
13	1	100
14	2	100
15	3	87.5
16	4	75
17	5	62.5
18	6	50
19	7	37.5
20	8	25
21	9	12.5

22 (4) The department must assess interest at the rate provided for  
23 delinquent taxes, but not penalties, retroactively to the date of  
24 deferral for a recipient who must repay deferred taxes under this  
25 chapter because the department has found that an investment project  
26 is not eligible for tax deferral. The debt for deferred taxes is not  
27 extinguished by insolvency or other failure of the recipient.

28 (5) Transfer of ownership does not terminate the deferral. The  
29 deferral is transferred, subject to the successor meeting the  
30 eligibility requirements of this chapter, for the remaining periods  
31 of the deferral.

32 NEW SECTION. **Sec. 8.** A lessor or owner of an eligible  
33 investment project is not eligible for a deferral under this chapter  
34 unless:

35 (1) The underlying ownership of the qualified solar canopy vests  
36 exclusively in the same person; or

1 (2) (a) The lessor by written contract agrees to pass the economic  
2 benefit of the deferral to the lessee;

3 (b) The lessee that receives the economic benefit of the deferral  
4 agrees in writing with the department to complete the annual tax  
5 performance report required under RCW 82.63.020(2); and

6 (c) The economic benefit of the deferral passed to the lessee is  
7 no less than the amount of tax deferred by the lessor and is  
8 evidenced by written documentation of any type of payment, credit, or  
9 other financial arrangement between the lessor or owner of the  
10 eligible investment project and the lessee.

11 NEW SECTION. **Sec. 9.** This section is the tax preference  
12 performance statement for the sales and use tax deferral program  
13 created in sections 4 and 7, chapter . . ., Laws of 2022 (sections 4  
14 and 7 of this act). This performance statement is only intended to be  
15 used for subsequent evaluation of the tax preference. It is not  
16 intended to create a private right of action by any party or be used  
17 to determine eligibility for preferential tax treatment.

18 (1) The legislature categorizes the tax preference created in  
19 this act as one intended to induce certain designated behavior by  
20 taxpayers, as indicated in RCW 82.32.808(2) (a).

21 (2) It is the legislature's specific public policy objective to  
22 incentivize the construction of solar canopies in the state of  
23 Washington in order to reduce greenhouse gas emissions from the  
24 electricity sector and boost overall electricity supplies as the  
25 state increases the electrification of transportation and powering  
26 and heating buildings.

27 (3) Pursuant to chapter 43.136 RCW, the joint legislative audit  
28 and review committee must review the sales and use tax deferral  
29 created in this act by December 31, 2030. The review must  
30 specifically evaluate:

31 (a) The number of solar canopies constructed in the state subject  
32 to a sales and use tax deferral under this act;

33 (b) The average and total electric output of solar canopies  
34 subject to a sales and use tax deferral under this act;

35 (c) The total beneficiary savings from the tax preference created  
36 in this act;

37 (d) The estimated reduction in greenhouse gas emissions resulting  
38 from energy produced from solar canopies assuming an equivalent

1 amount of energy would have otherwise been generated through the  
2 combustion of fossil fuels; and

3 (e) Any other metrics the committee finds relevant to the  
4 evaluation of the tax preference created in this act in meeting its  
5 public policy objective.

6 (4) In order to obtain the data necessary to perform the review  
7 in subsection (3) of this section, the joint legislative audit and  
8 review committee shall use information collected, compiled, and  
9 provided by the department of revenue. The committee may also contact  
10 recipients of the sales and use tax deferral under this act to  
11 confirm details of solar canopies.

12 NEW SECTION. **Sec. 10.** Sections 1 through 9, 11, and 12 of this  
13 act constitute a new chapter in Title 82 RCW.

14 NEW SECTION. **Sec. 11.** The automatic expiration date for tax  
15 preferences in RCW 82.32.805 does not apply to this act.

16 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2022.

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