

SENATE BILL REPORT

E2SHB 1301

As of March 20, 2013

Title: An act relating to creating clean energy jobs in Washington state through renewable energy incentives.

Brief Description: Creating clean energy jobs in Washington state through renewable energy incentives.

Sponsors: House Committee on Finance (originally sponsored by Representatives Morris, Ryu, McCoy, Hudgins, Morrell and Pollet).

Brief History: Passed House: 3/09/13, 58-39.

Committee Activity: Energy, Environment & Telecommunications: 3/20/13.

Brief Summary of Engrossed Second Substitute Bill

- Replaces annual cost-recovery incentive applications with a voucher entitling applicants to receive incentive payments for a term of ten years.
- Limits incentive payments to \$25,000 per year per system.
- Moves program administration from the Department of Revenue to an agency to be designated by the Governor.
- Authorizes qualifying utilities to claim an additional tax credit for electricity generated by a utility-owned solar energy system with a capacity of up to 100 kilowatts installed on the premises of a residential or commercial retail electric customer.
- Authorizes the Utilities and Transportation Commission to allow utilities to recover in tariffs the cost of certain solar energy systems.
- Establishes performance benchmarks, review by the Joint Legislative Audit and Review Committee, and reporting requirements.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

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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.

Background: Renewable Energy Cost-Recovery Incentive Program. In 2005, the Legislature created a Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Program) to promote renewable energy systems located in Washington that produce electricity from solar, wind, or anaerobic digesters. In 2009, the Legislature expanded the Cost-Recovery Program to include community solar projects that are generally owned by multiple individuals, utilities, or companies.

Incentive Rate. The owner of an eligible system may apply for an incentive payment from the electric utility serving the applicant. The base rate for the incentive is generally \$0.15 per kilowatt-hour (kWh) of electricity produced, except that the base rate for community solar projects is set at \$0.30 per kWh produced. Extra incentives for solar or wind generating systems that use certain components manufactured in Washington can increase the incentive payments to \$1.08 per kWh produced for community solar projects and \$0.54 per kWh produced for all other systems.

Incentive Payment Caps. Incentive payments are capped at \$5,000 annually per applicant. In the case of community solar projects, each member is eligible for a payment in proportion to the member's ownership share up to \$5,000. A utility providing incentive payments is allowed a credit against its public utility tax (PUT) for incentives paid, limited to \$100,000 or 0.5 percent of its taxable power sales, whichever is greater. If the amount of incentive requests exceeds the amount of funds available to the participating utility, the incentive payments must be reduced proportionally.

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.

Limits on the Generating Capacity of Eligible Systems. Except for limiting community solar projects to a generating capacity of no greater than 75 kilowatts (kW), there are no limitations on the generating capacity of eligible cost-recovery systems. The payment caps do, however, act to limit the size of eligible systems.

The Cost-Recovery Program expires June 30, 2020.

Agencies Administering the Cost-Recovery Program. The Department of Revenue (DOR), with assistance from the Washington State University Energy Program (WSU), administers the Cost-Recovery Program.

Washington Utilities and Transportation Commission (WUTC). WUTC is a three-member commission that has broad authority to regulate the rates, services, and practices of investor-owned electric utilities, among other industries. WUTC determines whether utility expenses and investments are prudent before allowing a utility to recover the cost of such investments through rates. In addition, when a utility acquires a resource, WUTC determines the extent to which the utility may recover its investment through its rates after considering the prudence of the investment based on the information available at the time the utility made its decision to acquire a resource. Furthermore, when a utility seeks to sell an asset, WUTC

must generally require the utility to demonstrate a net benefit to customers from the asset's sale.

Energy Independence Act. Approved by voters in 2006, the Energy Independence Act, also known as Initiative 937 (I-937), requires electric utilities with 25,000 or more customers (qualifying utilities) to meet targets for energy conservation and for using eligible renewable resources.

Summary of Bill:

I. Changes to the Cost Recovery Program.

Expanding the List of Eligible Entities. The eligibility to receive cost-recovery incentive payments is expanded to any person who is the meter holder and owner of an eligible renewable energy system (system), so long as they are not in the light and power business. The term person is broadly defined and includes, among other things, receivers, political subdivisions of the state of Washington, and the United States.

Changing the Eligible Size of Cost-Recovery Systems. Retail electric customers are limited to receiving incentive payments for systems with a generating capacity up to 5 kW. Meter holders who are not retail electric customers may receive incentive payments for systems with a generating capacity up to 100 kW.

Changing the Amounts of Cost-Recovery Payments. No person may receive incentives for electricity generated in excess of the net kWh consumed annually at the metered location. Total incentive payments are capped at \$25,000 per year per system.

Changing the Administrative Agency of the Cost Recovery Program. Program administration is moved from DOR and WSU to an agency designated by the Governor (Agency).

Replacing Annual Applications with Ten-Year Vouchers. The annual application process for cost-recovery incentive payments is repealed. It is replaced with a process where the Agency issues vouchers entitling a recipient to receive incentive payments for a term of ten years. No vouchers may be issued after June 30, 2023. The voucher is transferrable to a new meter holder as long as the new meter holder is also a person eligible to receive incentive payments. The award of a voucher creates a contractually enforceable promise on behalf of the state to authorize the utility to receive a credit against its public utility taxes equal to the annual incentive payments made by the utility in any fiscal year. An owner of a system who is already receiving cost-recovery incentive payments prior to July 1, 2013, may apply to receive a voucher entitling the person to receive incentive payments until June 30, 2023.

Changing the Rates for Cost-Recovery Payments. While existing incentive rates are retained, the Agency may create a new base rate and multipliers to take effect on or after July 1, 2018, applicable to vouchers issued after that date. The Agency may change the base rate and multipliers to reflect the following: (1) decreases in the capital costs of purchasing and installing a system, (2) changes in the levelized costs of such systems, or (3) other factors the Agency deems relevant to incentivize job growth and renewable energy in the state. The Agency must adjust rates sooner, if requests for the incentive exceed 50 percent of the funds available for crediting the participating utilities.

Changing the Caps on PUT Credits. The total of credits available statewide to participating utilities is the aggregate of 0.5 percent of each participating utility's annual taxable power sales in the immediately preceding calendar year. Credits are allocated on a first-come, first-served basis.

Allowing Systems Financed by Third Parties Other than Utilities. After December 31, 2015, the Agency may authorize systems owned by third parties other than utilities to qualify for the Cost-Recovery Program, if such authorization is in compliance with other applicable law or rule and consistent with the Legislature's objectives.

Creating Performance Milestones. Performance milestones are established for assessing the effectiveness of the Cost-Recovery Program, such as: (1) a 100 percent increase in the number of solar energy systems installed and receiving the incentive, (2) a growth in solar and renewable energy-related employment, and (3) a decrease in the levelized cost of the systems receiving incentive payments. DOR must collect data and report annually to the Legislature on progress toward achieving the performance milestones. The Joint Legislative Audit and Review Committee (JLARC) must assess the performance of the incentives in 2019.

II. Additional Incentives for Utility-Owned Solar Energy Systems.

Creating an Additional PUT Credit. In addition to PUT credits that may be received under the Cost-Recovery Program, a qualifying utility under I-937 may claim a PUT credit from \$0.30 to \$1.08 per kWh generated by a solar energy system with a capacity up to 100 kW, if the system is owned by the utility and installed on the premises of a residential or commercial retail electric customer of the utility. Credits are capped at 0.5 percent of the qualifying utility's taxable power sales or \$100,000, whichever is greater. In addition, the qualifying utility retains ownership of the environmental attributes of the solar energy system.

Creating Performance Milestones. Performance milestones are established for utility-owned solar energy systems, such as an increased utilization of available tax credits at a growth rate of 5 percent each year for the first five years of the program. Requirements are also established for information that must be provided to a customer in a contract to lease or otherwise purchase power from a utility-owned solar energy system. Furthermore, qualifying utilities must report to JLARC the average price per kWh of electricity generated by the utility-financed systems.

Changing the Regulatory Treatment of Specified Solar Energy System Investments by WUTC. Upon request by an electrical company, WUTC is authorized to approve a tariff allowing the company to recover from its ratepayers the costs incurred in acquiring, installing, operating, and maintaining the following solar energy systems: (1) systems up to 5 kW for residential retail electric customers, and (2) systems up to 100 kW for commercial retail electric customer. Other changes are made to WUTC's current regulatory process; for example:

- shifts, from the company to WUTC, the burden of proving that the company's proposed tariff filing would be fair, just, reasonable, and sufficient without customer contribution;

- allows a company to transfer the distributed solar energy system without meeting the statutory requirement that the utility must demonstrate a net benefit to customers from the sale of the asset, before the asset can be transferred; and
- changes the definition of cost effective used by WUTC in evaluating a resource choice.

The section changing the regulatory treatment of solar energy system investments expires on December 31, 2020.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2013.

Staff Summary of Public Testimony: PRO: This bill is simpler and less aggressive than the version originally introduced. It is the product of endless stakeholder meetings and goes far in slimming the bureaucracy administering the cost-recovery program. While there has been some progress in growing Washington's solar industry, there is still a great untapped potential that the current cost-recovery program does not unlock. The provision allowing third-party ownership of solar systems should remain in the bill because it will make it easier for community solar systems to be built and operated. The ten-year vouchers are good because they give investment certainty but the \$5,000 cap should not be replaced with a cap on the kW capacity of a system. Manufacturing costs have declined so incentive payments can decline if ten-year vouchers are allowed. The cost-recovery program promotes local economic development. The 2020 expiration date for the cost-recovery program needs to change because it is a cliff that could kill Washington's solar industry.

CON: Utilities should not be allowed to own their own systems because the focus of the program should be on stimulating residential systems. Germany's experience in promoting and deploying solar power should be Washington's model. The five kW cap on residential systems should be removed because it will disproportionately harm eastern Washington residents. It is unclear if current community solar projects can continue under the bill. The current cost-recovery program is preferable to the new one proposed in the bill.

OTHER: DOR has had a difficult time administering the program because it does not have renewable energy expertise. The provisions in the bill directing reports to DOR should be changed to name a different agency. The cost-recovery incentive rate of \$0.54 or \$1.08 is very high when compared to the \$0.05 Puget Sound Energy (PSE) must pay for distributed energy – like solar – under federal law. Utility-owned systems are the best option if you want to deploy the most solar power. The cost shifts created by solar energy systems should be recognized because the more solar energy is deployed, the greater likelihood low-income ratepayers end up subsidizing wealthier rate payers. The Department of Commerce would be the best agency to administer the program because it follows the Administrative Procedures Act. In order to increase public utility participation in the cost-recovery program, all utilities should be allowed to participate, not just the I-937 qualifying utilities. Extra incentives are

needed for public utilities because they cannot use federal solar subsidies. Changes to the WUTC regulatory process to promote utility-owned solar energy could raise rates but WUTC supports the concept of the bill and is willing to work with stakeholders to improve the bill.

Persons Testifying: PRO: Representative Morris, prime sponsor; Joe Deets, Community Energy Solutions; John Hastings, David Kozin, A & R Solar, Island Community Solar; Dever Kuni, South Sound Solar; Joshua Miller, Western Solar Inc.; John Rothlin, Avista; Kelly Samson, Itek Energy.

CON: Lynne Dial, NW Energy Coalition; Kent Lopez, WA Rural Electric Cooperative Assn.; Michael O'Brien, Renewable NW Project.

OTHER: Ann Rendahl, WUTC; Nancy Atwood, PSE; Drew Shirk, DOR; Jim Smith, Klickitat PUD; Dave Warren, WA PUD Assn.; Donald Coughlin, citizen.