
SENATE BILL 5892

State of Washington

64th Legislature

2015 Regular Session

By Senator Ericksen

Read first time 02/09/15. Referred to Committee on Energy,
Environment & Telecommunications.

1 AN ACT Relating to encouraging reliable distributed solar energy;
2 amending RCW 82.16.120 and 80.28.005; adding new sections to chapter
3 82.16 RCW; adding new sections to chapter 80.28 RCW; adding a new
4 section to chapter 80.60 RCW; and adding a new chapter to Title 19
5 RCW.

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

7 **PART I**

8 **Clean Energy Jobs**

9 **Sec. 101.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to
10 read as follows:

11 (1)(a) Any individual, business, local governmental entity, not
12 in the light and power business or in the gas distribution business,
13 or a participant in a community solar project may apply to the light
14 and power business serving the situs of the system, each fiscal year
15 beginning on July 1, 2005, for an investment cost recovery incentive
16 for each kilowatt-hour from a customer-generated electricity
17 renewable energy system.

18 (b) In the case of a community solar project as defined in RCW
19 82.16.110(2)(a)(i), the administrator must apply for the investment
20 cost recovery incentive on behalf of each of the other owners.

1 (c) In the case of a community solar project as defined in RCW
2 82.16.110(2)(a)(iii), the company owning the community solar project
3 must apply for the investment cost recovery incentive on behalf of
4 each member of the company.

5 (2)(a) Before submitting for the first time the application for
6 the incentive allowed under subsection (4) of this section, the
7 applicant must submit to the department of revenue and to the climate
8 and rural energy development center at the Washington State
9 University, established under RCW 28B.30.642, a certification in a
10 form and manner prescribed by the department that includes, but is
11 not limited to, the following information:

12 (i) The name and address of the applicant and location of the
13 renewable energy system.

14 (A) If the applicant is an administrator of a community solar
15 project as defined in RCW 82.16.110(2)(a)(i), the certification must
16 also include the name and address of each of the owners of the
17 community solar project.

18 (B) If the applicant is a company that owns a community solar
19 project as defined in RCW 82.16.110(2)(a)(iii), the certification
20 must also include the name and address of each member of the company;

21 (ii) The applicant's tax registration number;

22 (iii) That the electricity produced by the applicant meets the
23 definition of "customer-generated electricity" and that the renewable
24 energy system produces electricity with:

25 (A) Any solar inverters and solar modules manufactured in
26 Washington state;

27 (B) A wind generator powered by blades manufactured in Washington
28 state;

29 (C) A solar inverter manufactured in Washington state;

30 (D) A solar module manufactured in Washington state;

31 (E) A stirling converter manufactured in Washington state; or

32 (F) Solar or wind equipment manufactured outside of Washington
33 state;

34 (iv) That the electricity can be transformed or transmitted for
35 entry into or operation in parallel with electricity transmission and
36 distribution systems; and

37 (v) The date that the renewable energy system received its final
38 electrical permit from the applicable local jurisdiction.

39 (b) Within thirty days of receipt of the certification the
40 department of revenue must notify the applicant by mail, or

1 electronically as provided in RCW 82.32.135, whether the renewable
2 energy system qualifies for an incentive under this section. The
3 department may consult with the climate and rural energy development
4 center to determine eligibility for the incentive. System
5 certifications and the information contained therein are subject to
6 disclosure under RCW 82.32.330(3)(1).

7 (c) Beginning January 1, 2016, no applicant may receive a
8 certification for an incentive under this section.

9 (3)(a) By August 1st of each year application for the incentive
10 must be made to the light and power business serving the situs of the
11 system by certification in a form and manner prescribed by the
12 department that includes, but is not limited to, the following
13 information:

14 (i) The name and address of the applicant and location of the
15 renewable energy system.

16 (A) If the applicant is an administrator of a community solar
17 project as defined in RCW 82.16.110(2)(a)(i), the application must
18 also include the name and address of each of the owners of the
19 community solar project.

20 (B) If the applicant is a company that owns a community solar
21 project as defined in RCW 82.16.110(2)(a)(iii), the application must
22 also include the name and address of each member of the company;

23 (ii) The applicant's tax registration number;

24 (iii) The date of the notification from the department of revenue
25 stating that the renewable energy system is eligible for the
26 incentives under this section; (~~and~~)

27 (iv) A statement of the amount of kilowatt-hours generated by the
28 renewable energy system in the prior fiscal year; and

29 (v) A statement in the form of a signed affidavit to the light
30 and power business serving the situs of the system of the amount of
31 kilowatt-hours generated by the renewable energy system in the prior
32 fiscal year. The amount of kilowatt-hours generated may be
33 determined, at the option of the utility, from a reading of the
34 inverter or production meter connected to the system.

35 (b) Within sixty days of receipt of the incentive certification
36 the light and power business serving the situs of the system must
37 notify the applicant in writing whether the incentive payment will be
38 authorized or denied. The business may consult with the climate and
39 rural energy development center to determine eligibility for the
40 incentive payment. Incentive certifications and the information

1 contained therein are subject to disclosure under RCW
2 82.32.330(3)(1).

3 (c)(i) Persons, administrators of community solar projects, and
4 companies receiving incentive payments must keep and preserve, for a
5 period of five years, suitable records as may be necessary to
6 determine the amount of incentive applied for and received. Such
7 records must be open for examination at any time upon notice by the
8 light and power business that made the payment or by the department.
9 If upon examination of any records or from other information obtained
10 by the business or department it appears that an incentive has been
11 paid in an amount that exceeds the correct amount of incentive
12 payable, the business may assess against the person for the amount
13 found to have been paid in excess of the correct amount of incentive
14 payable and must add thereto interest on the amount. Interest is
15 assessed in the manner that the department assesses interest upon
16 delinquent tax under RCW 82.32.050.

17 (ii) If it appears that the amount of incentive paid is less than
18 the correct amount of incentive payable the business may authorize
19 additional payment.

20 (4) Except for community solar projects, the investment cost
21 recovery incentive may be paid fifteen cents per economic development
22 kilowatt-hour unless requests exceed the amount authorized for credit
23 to the participating light and power business. For community solar
24 projects, the investment cost recovery incentive may be paid thirty
25 cents per economic development kilowatt-hour unless requests exceed
26 the amount authorized for credit to the participating light and power
27 business. For the purposes of this section, the rate paid for the
28 investment cost recovery incentive may be multiplied by the following
29 factors:

30 (a) For customer-generated electricity produced using solar
31 modules manufactured in Washington state or a solar stirling
32 converter manufactured in Washington state, two and four-tenths;

33 (b) For customer-generated electricity produced using a solar or
34 a wind generator equipped with an inverter manufactured in Washington
35 state, one and two-tenths;

36 (c) For customer-generated electricity produced using an
37 anaerobic digester, or by other solar equipment or using a wind
38 generator equipped with blades manufactured in Washington state, one;
39 and

1 (d) For all other customer-generated electricity produced by
2 wind, eight-tenths.

3 (5)(a) No individual, household, business, or local governmental
4 entity is eligible for incentives provided under subsection (4) of
5 this section for more than five thousand dollars per year.

6 (b) Except as provided in (c) through (e) of this subsection (5),
7 each applicant in a community solar project is eligible for up to
8 five thousand dollars per year.

9 (c) Where the applicant is an administrator of a community solar
10 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible
11 for an incentive but only in proportion to the ownership share of the
12 project, up to five thousand dollars per year.

13 (d) Where the applicant is a company owning a community solar
14 project that has applied for an investment cost recovery incentive on
15 behalf of its members, each member of the company is eligible for an
16 incentive that would otherwise belong to the company but only in
17 proportion to each ownership share of the company, up to five
18 thousand dollars per year. The company itself is not eligible for
19 incentives under this section.

20 (e) In the case of a utility-owned community solar project, each
21 ratepayer that contributes to the project is eligible for an
22 incentive in proportion to the contribution, up to five thousand
23 dollars per year.

24 (6) If requests for the investment cost recovery incentive exceed
25 the amount of funds available for credit to the participating light
26 and power business, the incentive payments must be reduced
27 proportionately.

28 (7) The climate and rural energy development center at Washington
29 State University energy program may establish guidelines and
30 standards for technologies that are identified as Washington
31 manufactured and therefore most beneficial to the state's
32 environment.

33 (8) The environmental attributes of the renewable energy system
34 belong to the applicant, and do not transfer to the state or the
35 light and power business upon receipt of the investment cost recovery
36 incentive.

37 (9) No incentive may be paid under this section for kilowatt-
38 hours generated before July 1, 2005, or after June 30, 2020.

1 NEW SECTION. **Sec. 102.** A new section is added to chapter 82.16
2 RCW to read as follows:

3 The definitions in this section apply to part I of this act
4 unless the context clearly requires otherwise.

5 (1) "Administrator" means an owner and assignee of a community
6 solar project as defined in subsection (3)(a) of this section that is
7 responsible for applying for the investment cost recovery incentive
8 on behalf of the other owners and performing such administrative
9 tasks on behalf of the other owners as may be necessary, such as
10 receiving investment cost recovery incentive payments, and allocating
11 and paying appropriate amounts of such payments to the other owners.

12 (2) "Commission" means the utilities and transportation
13 commission.

14 (3) "Community solar project" means:

15 (a) The alternating current electricity from a solar energy
16 system with a nameplate electrical generating capacity up to one
17 hundred kilowatts, that is owned by a utility or nonprofit
18 organization that is placed on the property owned by a cooperating
19 local government; or

20 (b) The alternating current electricity from a utility-owned
21 solar energy system with a nameplate electrical generating capacity
22 up to five hundred kilowatts that is voluntarily funded by the
23 utility's ratepayers where, in exchange for their financial support,
24 the utility gives contributors a payment or credit on their utility
25 bill for the value of the electricity produced by the project.

26 (4) "Department" means the department of revenue.

27 (5) "Economic development kilowatt-hour" means the actual
28 kilowatt-hour measurement of eligible electricity multiplied by the
29 appropriate economic development factor.

30 (6) "Eligible electricity" includes:

31 (a) A community solar project;

32 (b) The alternating current electricity from a solar energy
33 system that has a generating capacity of not more than five hundred
34 kilowatts, is owned by a utility, and is installed on the premises of
35 a retail electric residential, commercial, nonprofit organization, or
36 local government customer of the utility in Washington;

37 (c) The alternating current electricity that is generated from a
38 solar energy system owned by a utility customer and located in
39 Washington and installed on that customer's real property that is
40 also provided electricity distributed by the utility. Except for

1 community solar projects, a system located on a leasehold interest
2 does not qualify under this definition;

3 (d) The alternating current electricity from a project developed
4 pursuant to a utility solar energy program; or

5 (e) The alternating current from a qualified solar energy system
6 that has a generating capacity of not more than one hundred
7 kilowatts, and that has met the requirements in sections 304 and 305
8 of this act to offer service to retail electric customers.

9 (7) "Local government" means any unit of local government of this
10 state including, but not limited to, counties, cities, towns,
11 municipal corporations, quasi-municipal corporations, special purpose
12 districts, institutions of higher education as defined in RCW
13 28B.10.016, and school districts.

14 (8) "Nonprofit organization" means an organization exempt from
15 taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal
16 revenue code of 1986, as amended, as of January 1, 2009.

17 (9) "Photovoltaic cell" means a device that converts light
18 directly into electricity without moving parts.

19 (10) "Qualified solar energy system" has the same meaning as
20 provided in section 202 of this act.

21 (11) "Renewable energy system" means a solar energy system.

22 (12) "Solar energy system" means any device or combination of
23 devices or elements that rely upon direct sunlight as an energy
24 source for use in the generation of electricity.

25 (13) "Solar inverter" means the device used to convert direct
26 current to alternating current in a solar energy system.

27 (14) "Solar module" means the smallest nondivisible self-
28 contained physical structure housing interconnected photovoltaic
29 cells and providing a single direct current electrical output.

30 (15) "Storage system" means a system or technology that can store
31 electricity generated by a solar energy system or systems at up to
32 twenty percent of the maximum total daily output of the solar energy
33 system or systems to which the storage system is coupled. A storage
34 system can be coupled to a solar energy system on the premises where
35 the system is located or can be coupled to multiple systems on any
36 premises served by the distribution feeder where the solar energy
37 systems are located.

38 (16) "Utility" means a consumer-owned utility or investor-owned
39 utility as those terms are defined in RCW 19.280.020.

1 (17) "Utility customer" has the same meaning as provided in
2 section 202 of this act.

3 (18) "Utility solar energy program" means a solar energy program
4 that has been approved as provided in chapter 19.--- RCW (the new
5 chapter created in section 401 of this act).

6 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.16
7 RCW to read as follows:

8 (1)(a) Any individual, business, educational institution,
9 utility, or local governmental entity or administrator of a community
10 solar project may apply to the department, each fiscal year beginning
11 January 1, 2016, for the department to authorize the utility serving
12 the situs of the system to remit an annual investment cost recovery
13 incentive for each economic development kilowatt-hour. Annual
14 investment cost recovery incentives allowed under this subsection and
15 paid for a system that is a qualified solar energy system may not be
16 assigned to a financial institution.

17 (b) In the case of a community solar project, the administrator
18 must apply for the investment cost recovery incentive on behalf of
19 each of the other owners.

20 (2)(a) Before submitting to the department for the first time the
21 certification for the incentive allowed under subsection (1) of this
22 section, the applicant must submit to the department of commerce an
23 application for certification in a form and manner prescribed by the
24 department of commerce that includes, but is not limited to, the
25 following information:

26 (i) The name and address of the applicant and location of the
27 renewable energy system. If the applicant is an administrator of a
28 community solar project as defined in section 102 of this act, the
29 certification must also include the name and address of each of the
30 owners of the community solar project.

31 (ii) An affidavit that the premises on which the system applying
32 for the incentive is not receiving any other incentive under RCW
33 82.16.120.

34 (iii) That the electricity produced by the applicant meets the
35 definition of eligible electricity and that the renewable energy
36 system produces electricity with:

37 (A) Any solar inverters and solar modules manufactured in
38 Washington state;

39 (B) A solar smart inverter manufactured in Washington state;

1 (C) A solar module manufactured in Washington state;

2 (D) A stirling converter manufactured in Washington state; or

3 (E) Solar equipment manufactured outside of Washington state;

4 (iv) Storage system used, if any;

5 (v) A statement of the amount of eligible electricity and
6 economic development kilowatt-hours expected to be generated by the
7 renewable energy system and an estimate of the annual electrical use
8 of the premises;

9 (vi) That the electricity can be transformed or transmitted for
10 entry into or operation in parallel with electricity transmission and
11 distribution systems; and

12 (vii) The date that the solar energy system received or is
13 expected to receive its final electrical permit from the applicable
14 local jurisdiction.

15 (b) Within thirty days of receipt of the application for
16 certification and the final electrical permit from the local
17 jurisdiction, the department of commerce must notify the applicant by
18 mail, or electronically as provided in RCW 82.32.135, whether the
19 renewable energy system qualifies and is certified for an incentive
20 under this section. The department of commerce may consult with the
21 climate and rural energy development center to determine eligibility
22 for the incentive. System certifications and the information
23 contained therein are subject to disclosure under RCW
24 82.32.330(3)(1).

25 (c) Once a system is certified by the department of commerce to
26 be eligible for the incentive, that certification is good for ten
27 years and may not be retroactively changed due to evolutionary
28 standards or interpretations of the program administrators.
29 Certification of a renewable energy system follows the system with
30 the transfer of property.

31 (3)(a) After a system is certified by the department of commerce,
32 an initial application for the incentive under this section must be
33 made to the participating utility serving the situs of the system in
34 a form and manner prescribed by the department of commerce, after
35 consultation with the department and the utility, that includes, but
36 is not limited to, the following information:

37 (i) The name and address of the applicant and location of the
38 renewable energy system, the approximate expected generation of the
39 system and annual electrical load of the premises where the system is
40 located.

1 (A) If the applicant is an administrator of a community solar
2 project as defined in section 102 of this act, the application must
3 also include the name and address of each of the owners of the
4 community solar project.

5 (B) If the applicant is a utility, the person designated by the
6 utility;

7 (ii) The applicant's tax registration number; and

8 (iii) The date of the notification from the department of
9 commerce stating that the solar energy system is certified and
10 eligible for the incentives under this section.

11 (b) Within sixty days of receipt of the incentive certification
12 the utility serving the situs of the system must notify the
13 applicant, the department of commerce, and the department in writing
14 whether the incentive payment will be authorized or denied by the
15 utility. The department must confirm that the incentive payment due
16 will not exceed the credit allowed to the utility in section 104 of
17 this act.

18 (c) By August 1st of each year after the application has been
19 authorized by the utility as required under (b) of this subsection,
20 persons must provide a statement in the form of a signed affidavit to
21 the department of the amount of eligible kilowatt-hours generated by,
22 and the amount of economic development kilowatt-hours attributable
23 to, the renewable energy system in the prior fiscal year. The amount
24 of eligible electricity generated, in kilowatt-hours, may be
25 determined from a reading of the inverter or production meter
26 connected to the system. The amount of economic development kilowatt-
27 hours may be calculated by the amount of eligible electricity
28 multiplied by the multipliers certified in the system certification.

29 (d) The department must calculate, and provide to the utility,
30 the amount of the incentive payment due to each utility customer,
31 utility, and community solar project, located on the premises
32 serviced by that utility and the total amount of credit for each
33 utility against tax due under this chapter, and may consult with the
34 department of commerce when making this calculation.

35 (e)(i) Utility customers, administrators of community solar
36 projects, and utilities receiving incentive payments must keep and
37 preserve, for a period of five years, suitable records as may be
38 necessary to determine the amount of incentive applied for and
39 received. Such records must be open for examination at any time upon
40 notice by the department. If upon examination of any records or from

1 other information obtained by the department it appears that an
2 incentive has been paid in an amount that exceeds the correct amount
3 of incentive payable, the department may assess against the recipient
4 of the incentive for the amount found to have been paid in excess of
5 the correct amount of incentive payable and must add thereto interest
6 and may assess penalties on the amount. Interest and penalties are
7 assessed in the manner that the department assesses penalties and
8 interest upon delinquent tax under RCW 82.32.050.

9 (ii) If it appears that the amount of incentive paid is less than
10 the correct amount of incentive payable the department may authorize
11 additional payment to the utility customer and additional credit due
12 to the utility.

13 (4) Once a system is certified by the department of commerce and
14 has been authorized by and has signed an interconnection agreement
15 with the utility serving the situs of the system, it will be
16 considered to have commenced operation. The eligible electricity base
17 rate used to calculate the investment cost recovery incentive,
18 payable for a period of ten years, must be based on the year in which
19 the system commenced operation as follows:

20 2016: \$0.15

21 2017: \$0.14

22 2018: \$0.13

23 2019: \$0.12

24 2020: \$0.11

25 (5) For the purposes of this section, the rate paid for the
26 investment cost recovery incentive is determined by multiplying the
27 eligible electricity base rate by the following factors:

28 (a) For eligible electricity produced using solar modules
29 manufactured in Washington state or a solar stirling converter
30 manufactured in Washington state, two and four-tenths;

31 (b) For eligible electricity produced using a solar generator
32 equipped with a smart inverter manufactured in Washington state, one
33 and two-tenths;

34 (c) For eligible electricity produced using other solar equipment
35 one; and

36 (d) For eligible electricity using a storage system, seven-
37 tenths.

38 (6)(a) No individual, household, business, educational
39 institution, local government entity, or utility is eligible for
40 incentives under this section for otherwise eligible electricity

1 generated in excess of the net kilowatt-hours consumed annually at
2 the metered location.

3 (b) For projects that are not community solar projects, no person
4 is eligible for annual incentive payments provided under this section
5 for more than the following amounts per system:

6 (i) 0-10 kilowatts - \$5,000

7 (ii) 11-25 kilowatts - \$15,000

8 (iii) 26-30 kilowatts - \$20,000

9 (iv) 31-75 kilowatts - \$25,000

10 (v) 76 kilowatts or greater - \$30,000

11 (c) Except as provided otherwise in (d) and (e) of this
12 subsection (6), each owner or member in a community solar project is
13 eligible for up to five thousand dollars per year.

14 (d) Where the applicant is an administrator of a community solar
15 project, each owner is eligible for an incentive but only in
16 proportion to the ownership share of the project, up to five thousand
17 dollars per year.

18 (e) In the case of a utility-owned community solar project, each
19 ratepayer that contributes to the project is eligible for an
20 incentive in proportion to the contribution, up to five thousand
21 dollars per year.

22 (7) The climate and rural energy development center at Washington
23 State University extension energy program, after consultation with
24 the department of commerce, may establish nonbinding guidelines and
25 standards for technologies that are identified as Washington
26 manufactured and therefore most beneficial to the state's
27 environment. Nothing in this subsection is intended to preempt the
28 department of commerce's authority to certify the eligibility of
29 Washington manufactured technologies and each individual system for
30 the amount of incentives for which they are eligible.

31 (8) The environmental attributes of the renewable energy system
32 belong to the applicant.

33 (9) No incentive may be paid under this section for kilowatt-
34 hours generated by a system that commences operation before January
35 1, 2016, or for kilowatt-hours generated by a system that commences
36 operation after December 31, 2020.

37 (10) No incentive may be paid under this section for a qualified
38 solar energy system beginning operation after December 31, 2015, that
39 is net metered under chapter 80.60 RCW, unless the qualified solar

1 energy system qualifies for net metering under section 309 of this
2 act.

3 (11) Each system qualifying for incentives under this section
4 must have a production meter that interconnects with the utility's
5 system in a manner that allows the electric meter measuring
6 consumption to measure the total amount of electricity consumed on
7 the premises.

8 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.16
9 RCW to read as follows:

10 (1) Beginning January 1, 2016, a utility must be allowed a credit
11 against taxes due under this chapter in an amount equal to investment
12 cost recovery incentive payments made in any fiscal year under
13 section 103 of this act. The credit must be taken in a form and
14 manner as required by the department. The sum of credits under this
15 section and credits allowed under RCW 82.16.120 for the fiscal year
16 may not exceed one percent of the businesses' taxable power sales due
17 under RCW 82.16.020(1)(b) or two hundred fifty thousand dollars,
18 whichever is greater. Incentive payments to participants in a
19 utility-owned community solar project, beginning operation after
20 January 1, 2016, may only account for up to thirty percent of the
21 total credit allowed to that utility. The credit may not exceed the
22 tax that would otherwise be due under this chapter. Incentive
23 payments claimed by a utility for utility solar projects may only
24 account for up to forty-five percent of the total allowable credit.

25 (2) Incentive payments for systems greater than ten kilowatts may
26 not claim more than fifty percent of the total allowable credit.

27 (3) Refunds may not be granted in the place of credits.
28 Expenditures not used to earn a credit in one fiscal year may not be
29 used to earn a credit in subsequent years.

30 (4) For any person that has claimed credit for incentive payment
31 amounts that exceed the correct amount of the incentive payable under
32 section 103 of this act, the amount of tax against which credit was
33 claimed for the excess payments are immediately due and payable from
34 the recipient of the incentive that received the excess payment. The
35 department must assess interest and may assess penalties against the
36 person that claimed the credit. Interest must be assessed at the rate
37 provided for delinquent excise taxes under chapter 82.32 RCW,
38 retroactively to the date the amount of economic development
39 kilowatt-hours generated was filed with the department, and accrue

1 until the excess incentive payment against which the economic
2 development kilowatt-hour production filing was claimed, are repaid.

3 (5) The right to earn tax credits and incentive payments under
4 this section expires for solar energy systems beginning operation
5 after December 31, 2020. Credits and incentives may not be claimed
6 for economic development kilowatt-hours generated after December 31,
7 2030.

8 **PART II**

9 **Solar Energy and Qualified Solar Energy Systems**

10 NEW SECTION. **Sec. 201.** It is the intent of the legislature to
11 provide mechanisms for low-cost financing of energy systems on the
12 distribution side of the electricity grid, to provide for consumer
13 protection of customers of these systems, and to recognize electric
14 utility efforts in being early adopters of programs that encourage
15 energy independence by customers.

16 NEW SECTION. **Sec. 202.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Electric utility" means a consumer-owned utility or
20 investor-owned utility as those terms are defined in RCW 19.280.020.

21 (2) "Net metering system" has the same meaning as provided in RCW
22 80.60.010.

23 (3) "Qualified solar energy system" means a solar energy system:

24 (a) That is located in Washington;

25 (b) That is installed on real property that is not leased and is
26 provided electricity by an electric utility;

27 (c) In which, on an annual basis, the net electricity fed back
28 into the distribution system of the electric utility is less than or
29 approximately equal to the electricity consumed on the premises where
30 the qualified solar energy system is located; and

31 (d) That is a solar energy system that is either owned by:

32 (i) An electric utility; or

33 (ii) A solar energy services company.

34 (4) "Solar energy services company" means a private entity, which
35 is not an electric utility, that for financial benefit provides a
36 utility customer with a solar energy system or the electricity from a
37 solar energy system for use on the premises of the customer. This

1 form of transaction for facilities, electricity, or power may
2 include: A lease of generating equipment by the vendor to the utility
3 customer; a power purchase agreement where the vendor is compensated
4 according to the kilowatt-hours delivered to the utility customer; a
5 lease from the utility customer to the vendor and a sale of power by
6 the vendor back to the utility customer; or other compensation for
7 the delivery of electricity to the utility customer by the vendor. A
8 solar energy services company is not: (a) A commercial lender that
9 provides loans for the purchase of a solar energy system that is
10 regulated by the department of financial institutions; or (b) an
11 entity that sells or installs solar energy systems at retail.

12 (5) "Utility customer" means an owner of a solar energy system, a
13 user of a qualified solar energy system, or an owner or user of other
14 renewable energy systems that is a customer of the electric utility
15 serving the premises on which the system is located, and where the
16 system is sized to meet approximately all or a portion of their
17 electric needs on the premises.

18 (6) "Value of solar" means the benefits, net of impacts, that a
19 solar energy system provides to a utility's customers and
20 distribution system. Such value may include, but is not limited to:
21 Distribution system benefits or impacts; need of the utility for
22 power, including the need for the time-of-day generation provided by
23 solar energy systems; recovery of the fixed costs of the utility; and
24 avoided power costs. The "value of solar" may not be greater than the
25 bundled retail electric rate paid by the utility customer at the
26 premises where the solar energy system is located.

27 NEW SECTION. **Sec. 203.** (1) An electric utility may offer a
28 solar energy program, which may include a qualified solar energy
29 system program, that provides customers access to solar energy
30 systems on their property. A solar energy services company may offer
31 a qualified solar energy system program to utility customers pursuant
32 to this chapter.

33 (2) An electric utility or solar energy services company that
34 offers a qualified solar energy system program to utility customers
35 must ensure open and fair access through competitive bidding of
36 systems and licensed contractors for installation of these systems.
37 The electric utility or solar energy services company must ensure a
38 reasonable price for solar energy systems through the use of a

1 skilled local work force and a diversity of businesses in
2 implementing the program.

3 NEW SECTION. **Sec. 204.** (1) If an electric utility offers
4 qualified solar energy systems to at least their residential rate
5 class and one additional customer class, no solar energy services
6 company may offer a qualified solar energy system directly to that
7 utility's customers.

8 (2) An electric utility seeking to establish a solar energy
9 program may submit a program design to the commission for investor-
10 owned utilities and the appropriate governing board for consumer-
11 owned utilities, for approval.

12 (3) If a qualified solar energy system program is included in the
13 program design, the qualified solar energy system program design must
14 include the following:

15 (a) A fair market value purchase option at the end of the term of
16 the contract;

17 (b) A reasonable process for transferring the obligation with a
18 change of ownership of the underlying property that:

19 (i) For a utility program, does not place the utility's other
20 ratepayers at risk of assuming that obligation; and

21 (ii) For a solar energy services company program, a process that
22 does not unduly restrict the change of ownership; and

23 (c) A proposed list of financing models included in the program.
24 However, a program may include any, or all, lease or power purchase
25 financing models.

26 (4) The commission for investor-owned utilities and the
27 appropriate governing boards for consumer-owned utilities must
28 consider the submitted program design for approval within a
29 reasonable time.

30 (5) Upon approval, the commission for investor-owned utilities
31 and the appropriate governing boards for consumer-owned utilities
32 must publish a list of lease options, purchasing options, or other
33 solar energy program options being offered by the utility.

34 (6) If an electric utility chooses not to submit a solar energy
35 program design to the commission or appropriate governing board as
36 described in this section within one year of the effective date of
37 this section or, if submitted, the commission or appropriate
38 governing board has not approved a program design within two years
39 from the effective date of this section, a solar energy services

1 company may offer qualified solar energy systems directly to that
2 utility's customers, compliant with sections 304 and 305 of this act.

3 (7) In addition to complying with the provisions of sections 304
4 and 305 of this act and subsection (3) of this section, a solar
5 energy services company must demonstrate a net benefit to the utility
6 customer at the conclusion of the contract for the qualified solar
7 energy system.

8 NEW SECTION. **Sec. 205.** (1) Notwithstanding RCW 80.60.040(3), an
9 electric utility may require additional insurance or other form of
10 indemnification from the utility customer or solar energy services
11 company for qualified solar energy systems. Such indemnification must
12 hold the electric utility harmless, and the electric utility is not
13 liable, for any harm, economic or otherwise, caused to the utility
14 customer or solar energy services company for disconnection of the
15 qualified solar energy system or the utility customer's meter. Such
16 disconnection may be for safety and reliability purposes, faulty
17 solar energy system equipment, regardless of ownership, nonpayment of
18 an electric bill to the utility by the utility customer, or any other
19 action by a utility that affects a contract or agreement between the
20 utility customer and a solar energy services company, or violation by
21 the utility customer or solar energy services company of the executed
22 interconnection agreement for that solar energy system.

23 (2) Notwithstanding RCW 80.60.040(3), an electric utility may
24 require qualified solar energy systems to comply with additional
25 safety and performance standards as a condition of interconnection to
26 the utility's distribution system.

27 NEW SECTION. **Sec. 206.** (1) The legislature finds that it is in
28 the public interest to provide opportunity for utilities to be
29 providers of solar energy programs to their customers, and facilitate
30 the deployment of qualified solar energy systems and solar energy
31 programs to utility customers that are occupants of residential or
32 commercial premises. The legislature further finds that it is in the
33 public interest for electric utilities to lead in the deployment of
34 solar energy programs to maximize the benefits and minimize the
35 impacts on system reliability and power quality caused by the
36 location of and electricity generated from solar energy facilities.

1 (2) A utility is allowed to provide a solar energy program, which
2 may include qualified solar energy systems to its customers where it
3 provides distribution service to the situs.

4 (a) For electrical companies, the commission may adopt rules to
5 implement this section. The rules must require an option for the
6 utility customer to purchase a qualified solar energy system at fair
7 market value subsequent to the utility's recovery of its investment
8 and any incentives the system may be eligible for.

9 (b) For consumer-owned utilities, the governing board may adopt
10 policies to own, lease, and operate electrical generating facilities,
11 or otherwise contract for or provide solar energy programs to their
12 customers to implement this section. The policy must include an
13 option for the utility customer to purchase a qualified solar energy
14 system at fair market value subsequent to the utility's recovery of
15 its investment and any incentives for which the system may be
16 eligible.

17 (3) If a utility has established a solar energy program within
18 two years of the effective date of this section, solar energy
19 services companies are not allowed to offer qualified solar energy
20 systems directly to the utility's customers.

21 (4) If a utility has not established a solar energy program
22 within two years of the effective date of this section, solar energy
23 services companies are allowed to offer qualified solar energy
24 systems directly to that utility's customers.

25 (5) Contracts adopted pursuant to this section are not subject to
26 the provisions of section 302 of this act, RCW 80.28.005, and
27 sections 304 through 307 of this act.

28 **PART III**

29 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.16
30 RCW to read as follows:

31 (1) The legislature finds that deploying solar energy systems and
32 qualified solar energy systems encourages energy independence by
33 customers. The legislature further finds that the benefits of energy
34 independence do not justify that incentives provided by the taxpayers
35 of the state and customers of utilities to qualified solar energy
36 systems should overlap.

37 (2) Qualified solar energy systems that apply for and collect
38 incentives under this chapter are not eligible as a net metering

1 system in chapter 80.60 RCW. However, a utility may choose to allow
2 the solar energy system to qualify as a net metering system under
3 section 309 of this act.

4 (3) Qualified solar energy systems that choose to qualify as net
5 metering systems under RCW 80.60.010 are not eligible for renewable
6 incentives under this chapter.

7 NEW SECTION. **Sec. 302.** A new section is added to chapter 80.28
8 RCW to read as follows:

9 (1) The legislature finds that:

10 (a) Solar energy service companies are subject to the
11 jurisdiction of the commission.

12 (b) Traditional rate of return, rate base regulation of solar
13 energy service companies does not provide the most efficient and
14 effective means of achieving the public policy goals of this state as
15 declared in RCW 80.28.024, 80.28.074, and this section.

16 (c) The provision of solar energy services affects the public
17 interest and requires the oversight of the commission in order to
18 protect consumers. Nothing in this chapter precludes the office of
19 the attorney general from exercising its statutory authority under
20 chapter 19.86 RCW.

21 (2) The definitions in section 202 of this act apply to this
22 section.

23 **Sec. 303.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to
24 read as follows:

25 (~~Unless the context clearly requires otherwise,~~) The
26 definitions in this section apply throughout this chapter unless the
27 context clearly requires otherwise.

28 (1) "Bondable conservation investment" means all expenditures
29 made by electrical, gas, or water companies with respect to energy or
30 water conservation measures and services intended to improve the
31 efficiency of electricity, gas, or water end use, including related
32 carrying costs if:

33 (a) The conservation measures and services do not produce assets
34 that would be bondable utility property under the general utility
35 mortgage of the electrical, gas, or water company;

36 (b) The commission has determined that the expenditures were
37 incurred in conformance with the terms and conditions of a
38 conservation service tariff in effect with the commission at the time

1 the costs were incurred, and at the time of such determination the
2 commission finds that the company has proven that the costs were
3 prudent, that the terms and conditions of the financing are
4 reasonable, and that financing under this chapter is more favorable
5 to the customer than other reasonably available alternatives;

6 (c) The commission has approved inclusion of the expenditures in
7 rate base and has not ordered that they be currently expensed; and

8 (d) The commission has not required that the measures demonstrate
9 that energy savings have persisted at a certain level for a certain
10 period before approving the cost of these investments as bondable
11 conservation investment.

12 (2) "Conservation bonds" means bonds, notes, certificates of
13 beneficial interests in trusts, or other evidences of indebtedness or
14 ownership that:

15 (a) The commission determines at or before the time of issuance
16 are issued to finance or refinance bondable conservation investment
17 by an electrical, gas or water company; and

18 (b) Rely partly or wholly for repayment on conservation
19 investment assets and revenues arising with respect thereto.

20 (3) "Conservation investment assets" means the statutory right of
21 an electrical, gas, or water company:

22 (a) To have included in rate base all of its bondable
23 conservation investment and related carrying costs; and

24 (b) To receive through rates revenues sufficient to recover the
25 bondable conservation investment and the costs of equity and debt
26 capital associated with it, including, without limitation, the
27 payment of principal, premium, if any, and interest on conservation
28 bonds.

29 (4) "Consumer contract" means the lease, power purchase
30 agreement, loan, or other financial agreement between a solar energy
31 service company and a customer by which the customer has obtained
32 beneficial interest in a solar energy system installed on the
33 customer's side of the meter on property controlled by the customer.

34 (5) "Electric utility" means an electrical company regulated
35 under this title, a municipal electric utility formed under Title 35
36 RCW, a public utility district formed under Title 54 RCW, an
37 irrigation district formed under chapter 87.03 RCW, a cooperative
38 formed under chapter 23.86 RCW, a mutual corporation or association
39 formed under chapter 24.06 RCW, a port district formed under Title 53
40 RCW, or a water-sewer district formed under Title 57 RCW, that is

1 engaged in the business of distributing electricity to one or more
2 retail electric customers in the state.

3 (6) "Finance subsidiary" means any corporation, company,
4 association, joint stock association, or trust that is beneficially
5 owned, directly or indirectly, by an electrical, gas, or water
6 company, or in the case of a trust issuing conservation bonds
7 consisting of beneficial interests, for which an electrical, gas, or
8 water company or a subsidiary thereof is the grantor, or an
9 unaffiliated entity formed for the purpose of financing or
10 refinancing approved conservation investment, and that acquires
11 conservation investment assets directly or indirectly from such
12 company in a transaction approved by the commission.

13 (7) "Solar energy services" means the provision of electricity
14 generated by the system to the customer, and may include other
15 services associated with the use of a solar energy system under a
16 lease, power purchase agreement, loan, or other financial
17 transaction. Such other services may include system monitoring and
18 maintenance, warranty provisions, performance guarantees, and
19 customer service.

20 (8) Except as specified in (a) through (c) of this subsection,
21 "solar energy service company" means an electrical company that owns
22 or has a financial interest in a solar energy system on property
23 controlled by a customer, and enters into an agreement with a
24 customer to provide solar energy services. The following entities are
25 not solar energy service companies:

26 (a) Commercial lending institutions that are regulated by the
27 department of financial institutions and provide loans for the
28 purchase of solar energy systems;

29 (b) Companies engaged in retail sales or installation of solar
30 energy equipment that are not otherwise engaged in business as a
31 solar energy service company;

32 (c) Electric utilities that offer, or companies that contract
33 with an electric utility to provide, solar energy services to the
34 utility's customers or members in conjunction with other utility
35 services.

36 (9) "Solar energy system" means any device or combination of
37 devices or elements that rely upon direct sunlight as an energy
38 source for use in the generation of electricity.

1 NEW SECTION. **Sec. 304.** A new section is added to chapter 80.28
2 RCW to read as follows:

3 (1) No solar energy service company, including an affiliate of an
4 electric utility, may engage in business as a solar energy service
5 company in this state without first registering with the commission.
6 Engaging in business as a solar energy service company includes
7 advertising, soliciting, and offering or entering into an agreement
8 to provide solar energy services on property owned or controlled by a
9 customer.

10 (2) The registration must be on a form prescribed by the
11 commission and contain information that the commission may by rule
12 require. The registration must include, at a minimum: The name and
13 address of the company; the name and address of the company's
14 registered agent, if any; the company's universal business
15 identification number; the name, address, and title of each officer
16 or director; if the company is publicly traded, the company's most
17 recent annual report filed with the United States securities and
18 exchange commission; if the company is not publicly traded, the
19 company's current balance sheet; the company's latest annual report,
20 if any; and a description of the services the company offers or
21 intends to offer.

22 (3) The commission may reject an application that does not
23 contain all information required by this section.

24 (4) The commission must take action to approve or deny any
25 application for registration within thirty days after receiving the
26 application. The commission may approve an application with or
27 without a hearing. The commission may deny an application after a
28 hearing.

29 (5) The commission may charge solar energy service companies an
30 application fee to recover the cost of processing applications for
31 registration under this section.

32 (6) The commission may adopt rules that describe the manner by
33 which it will register solar energy service companies, the companies'
34 responsibilities for responding to customer complaints and disputes,
35 annual reporting requirements, and the amount of application and
36 regulatory fees.

37 (7) The commission may suspend or revoke a registration upon
38 complaint by any interested party, or upon the commission's own
39 motion after notice and opportunity for hearing, when the registered
40 solar energy service company or its agent has repeatedly violated

1 this chapter, the rules of the commission, or the laws of this state
2 or of the United States.

3 NEW SECTION. **Sec. 305.** A new section is added to chapter 80.28
4 RCW to read as follows:

5 (1) Solar energy service companies are subject to regulation as
6 described in this section concerning, at a minimum, registration,
7 disclosure of terms of services, and consumer protection. Solar
8 energy service companies are not subject to the regulatory
9 requirements concerning rate regulation and furnishing of service for
10 electrical companies in this title, including but not limited to RCW
11 80.28.010, 80.28.020, 80.28.025, 80.28.050, 80.28.060, 80.28.065,
12 80.28.068, 80.28.075, 80.28.080, 80.28.090, 80.28.100, 80.28.110, and
13 80.28.120. Competition among solar energy service companies serves
14 the same purposes as economic regulation. The commission may waive
15 any regulatory requirement under this title for solar energy service
16 companies when it determines that competition will serve the same
17 purposes as public interest regulation.

18 (2) Solar energy service companies may not engage in unfair or
19 deceptive business practices in the provision or promotion of solar
20 energy services. A solar energy service company shall, at a minimum:

21 (a) Keep its customer records available for inspection by the
22 commission for five years;

23 (b) Cooperate with commission investigations of customer
24 complaints;

25 (c) Ensure that its consumer contracts meet the disclosure
26 requirements established by commission rule. Consumer contracts must
27 clearly state:

28 (i) The payment schedule and an estimate of the amount of
29 periodic payments;

30 (ii) Estimates of the total contract payments in the first year,
31 the percentage contract payments increase each year, and the total
32 amount the customer will pay over time;

33 (iii) Any potential fees or penalties for late payments;

34 (iv) A concise list of customer obligations beyond the monthly
35 payments;

36 (v) An estimate of annual energy production for the term of the
37 contract;

38 (vi) A description of warranties provided;

1 (vii) The manufacturer and model of all substantial system
2 components;

3 (viii) If applicable, a reference to the source of any
4 information concerning historical or projected electricity prices;

5 (ix) A clear statement that the customer is responsible for
6 making a regular payment to his or her electric utility at billed
7 rates, in addition to a regular payment to the solar energy service
8 company;

9 (x) A clear statement that the customer is responsible for
10 entering into necessary interconnection and net metering agreements
11 with his or her electric utility; and

12 (xi) A description of a customer's options upon sale of his or
13 her property.

14 (3) Nothing in this section removes a solar energy service
15 company's responsibility to ensure that its consumer contracts also
16 meet the requirements of applicable state and federal laws.

17 (4) During a state of emergency declared under RCW 43.06.010(12),
18 the governor may waive or suspend the operation or enforcement of
19 this section or any portion of this section and issue any orders to
20 facilitate the operation of state or local government or to promote
21 and secure the safety and protection of the civilian population.

22 NEW SECTION. **Sec. 306.** A new section is added to chapter 80.28
23 RCW to read as follows:

24 For the purpose of RCW 19.86.170, actions or transactions of
25 solar energy service companies are not deemed otherwise permitted,
26 prohibited, or regulated by the commission.

27 NEW SECTION. **Sec. 307.** A new section is added to chapter 80.28
28 RCW to read as follows:

29 In addition to the penalties provided in this title, a violation
30 of this chapter constitutes an unfair or deceptive act in trade or
31 commerce in violation of chapter 19.86 RCW, the consumer protection
32 act. Acts in violation of this chapter are not reasonable in relation
33 to the development and preservation of business, and constitute
34 matters vitally affecting the public interest for the purpose of
35 applying the consumer protection act, chapter 19.86 RCW.

36 NEW SECTION. **Sec. 308.** A new section is added to chapter 80.28
37 RCW to read as follows:

1 (1) Unless the seller and buyer agree otherwise, in the event
2 that real property subject to a qualified solar energy system
3 consumer contract is sold, if a memorandum reflecting the essential
4 terms of the lease has been recorded with the county auditor, the
5 remainder of the contract must be assumed by the buyer. For purposes
6 of this section, essential terms include any terms so designated by
7 commission rule issued under the authority of this chapter.

8 (2) Upon transfer of ownership of real property subject to a
9 qualified solar energy system consumer contract, a buyer who assumes
10 the consumer contract continues to qualify to receive solar
11 production incentive payments and all other applicable benefits of
12 the consumer contract, including but not limited to utility
13 authorization to interconnect the solar energy system under chapter
14 80.60 RCW. A qualified solar energy consumer contract must include
15 provisions regarding assumption of contractual liability by new
16 property owners and release of liability by property sellers,
17 consistent with the rule developed by the commission under the
18 authority of this chapter.

19 (3) Thirty days prior to closing, the seller of real property
20 subject to a qualified solar energy system consumer contract shall
21 notify the utility and the solar energy service company of whether
22 the buyer will be assuming the contract. Within seven days of receipt
23 of the seller's notice:

24 (a) If notified that the buyer will be assuming the contract, the
25 solar energy service company shall provide the documentation
26 necessary for assumption of the contract by the buyer; or

27 (b) If notified that the buyer will not be assuming the contract,
28 the solar energy service company shall provide documentation of the
29 procedures for termination of the contract and removal of the solar
30 energy system.

31 (4) Within twenty-one days of receipt of the seller's written
32 notice that the buyer will not be assuming the contract, the solar
33 energy service company must remove the qualified solar energy system
34 from the real property.

35 (5) At the termination of a qualified solar energy system
36 consumer contract, whether at the end of the contract term or
37 earlier, the solar energy service company is responsible for the
38 removal of the qualified solar energy system from the property. The
39 solar energy service company may recover the cost of such removal

1 only as specified in the lease and noted in the recorded
2 memorandum.

3 (6) A consumer contract may not:

4 (a) Grant a utility or solar energy service company any authority
5 to approve or disapprove the transfer of real property associated
6 with a qualified solar energy system;

7 (b) Require arbitration of disputes; or

8 (c) Require other contract prohibitions.

9 (7) The solar energy service company shall guarantee sufficient
10 funds to properly dispose of the system at the end of the lease. The
11 solar energy service company is responsible for identifying hazardous
12 and commercial valuable materials contained in the solar energy
13 system and identifying procedures by which these materials may be
14 properly disposed of or reclaimed. The solar energy service company
15 must provide this information to the commission upon request.

16 NEW SECTION. **Sec. 309.** A new section is added to chapter 80.60
17 RCW to read as follows:

18 (1) The legislature recognizes that most homes and businesses
19 with renewable distributed generation systems are also interconnected
20 to the local distribution system of an electrical company and utilize
21 the system for safe and reliable electric service. Without a separate
22 rate for customer-generators, fixed costs incurred by the electric
23 utility to connect customer-generators are shifted to
24 nonparticipating customers within the utility's entire customer base.
25 An electric utility may file a rate for customer-generators to
26 mitigate such cost-shifting for approval by the commission, in the
27 case of an electrical company, or the appropriate governing body, in
28 the case of other electric utilities.

29 (2) Consistent with the other provisions of this chapter, for all
30 net metering and qualified solar energy systems interconnected to a
31 utility's distribution system subsequent to reaching the cumulative
32 generating capacity cap of 0.5 percent in RCW 80.60.020(1), an
33 electric utility may:

34 (a) Charge the customer-generator a monthly or volumetric fee
35 that is different than that charged for other customers of the
36 utility in the same rate class, as determined by the commission, in
37 the case for an electrical company, or the appropriate governing body
38 in the case of other electric utilities. The monthly or volumetric
39 fee may include standby, customer, demand, capacity, interconnection,

1 or other fees or charges, and must ensure that all costs caused by
2 the net metering system or qualified solar energy system are paid by
3 the customer-generator, and ensure that costs are not shifted within
4 any rate class from net metered customers in that rate class to
5 nonnet metered customers in that rate class; or

6 (b) Credit the customer-generator a value of solar as established
7 by the commission in the case of electrical companies, or the
8 appropriate governing body in the case of other electric utilities,
9 times the number of kilowatt-hours generated by the net metering or
10 qualified solar energy system. The credit must be applied to a
11 customer-generator's bill, and may not result in any compensation to
12 the customer-generator at the end of the annual period pursuant to
13 RCW 80.60.030.

14 (3) If implementing net metering credits under this section:

15 (a) An electric utility must measure the electricity consumed
16 during the billing period, in accordance with normal metering
17 practices, and through a separate production meter installed by the
18 customer-generator and connected to the distribution system, the
19 electricity generated by the net metering or qualified solar energy
20 system;

21 (b) The customer-generator must be billed for the electricity
22 supplied by the electric utility, in accordance with normal metering
23 and billing practices; and

24 (c) The customer-generator must be credited for the
25 kilowatt-hours generated during the billing period pursuant to
26 subsection (2) of this section, with this kilowatt-hour credit
27 appearing on the bill for the following billing period, or annually,
28 as determined by the utility.

29 **PART IV**

30 **Miscellaneous Provisions**

31 NEW SECTION. **Sec. 401.** Part II of this act constitutes a new
32 chapter in Title 19 RCW.

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