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HOUSE BILL 1138

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Morris, Ryu, Hudgins, and Freeman

Read first time 01/16/13. Referred to Committee on Environment.

1            AN ACT Relating to creating clean energy jobs in Washington through  
2 renewable energy incentives; amending RCW 82.16.110, 82.16.120, and  
3 82.16.130; and adding a new section to chapter 82.16 RCW.

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

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

7            The legislature intends to contribute towards the health and  
8 vitality of Washington state and provide Washington's citizens with the  
9 option to be energy independent and resilient by: Growing clean energy  
10 jobs, increasing the number of small renewable energy systems,  
11 increasing the overall megawatts of distributed renewable energy, and  
12 making this distributed renewable energy more efficient in converting  
13 natural energy into electricity. The legislature also intends to  
14 establish and track the attainment of performance milestones to measure  
15 the level of success achieved.

16            **Sec. 2.** RCW 82.16.110 and 2011 c 179 s 2 are each amended to read  
17 as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

3 (1) "Administrator" means an owner and assignee of a community  
4 solar project as defined in subsection (2)(a)(i) of this section that  
5 is responsible for applying for the investment cost recovery incentive  
6 on behalf of the other owners and performing such administrative tasks  
7 on behalf of the other owners as may be necessary, such as receiving  
8 investment cost recovery incentive payments, and allocating and paying  
9 appropriate amounts of such payments to the other owners.

10 (2)(a) "Community solar project" means:

11 (i) A solar energy system that is capable of generating up to  
12 seventy-five kilowatts of electricity and is owned by local  
13 individuals, households, nonprofit organizations, or nonutility  
14 businesses that is placed on the property owned by a cooperating local  
15 governmental entity that is not in the light and power business or in  
16 the gas distribution business;

17 (ii) A utility-owned solar energy system that is capable of  
18 generating up to seventy-five kilowatts of electricity and that is  
19 voluntarily funded by the utility's ratepayers where, in exchange for  
20 their financial support, the utility gives contributors a payment or  
21 credit on their utility bill for the value of the electricity produced  
22 by the project; or

23 (iii) A solar energy system, placed on the property owned by a  
24 cooperating local governmental entity that is not in the light and  
25 power business or in the gas distribution business, that is capable of  
26 generating up to seventy-five kilowatts of electricity, and that is  
27 owned by a company whose members are each eligible for an investment  
28 cost recovery incentive for the same customer-generated electricity as  
29 provided in RCW 82.16.120.

30 (b) For the purposes of "community solar project" as defined in (a)  
31 of this subsection:

32 (i) "Company" means an entity that is:

33 (A)(I) A limited liability company;

34 (II) A cooperative formed under chapter 23.86 RCW; or

35 (III) A mutual corporation or association formed under chapter  
36 24.06 RCW; and

37 (B) Not a "utility" as defined in this subsection (2)(b); and

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

4 (iii) "Utility" means a light and power business, an electric  
5 cooperative, or a mutual corporation that provides electricity service.

6 (3) "Customer-generated electricity" means a community solar  
7 project or the alternating current electricity that is generated from  
8 a renewable energy system located in Washington and installed on an  
9 individual's, businesses', or local government's real property that is  
10 also provided electricity generated by a light and power business.  
11 Except for community solar projects, a system located on a leasehold  
12 interest does not qualify under this definition. Except for utility-  
13 owned community solar projects, "customer-generated electricity" does  
14 not include electricity generated by a light and power business with  
15 greater than one thousand megawatt hours of annual sales or a gas  
16 distribution business.

17 (4) "Economic development kilowatt-hour" means the actual kilowatt-  
18 hour measurement of customer-generated electricity multiplied by the  
19 appropriate economic development factor.

20 (5) "Local governmental entity" means any unit of local government  
21 of this state including, but not limited to, counties, cities, towns,  
22 municipal corporations, quasi-municipal corporations, special purpose  
23 districts, and school districts.

24 (6) "Photovoltaic cell" means a device that converts light directly  
25 into electricity without moving parts.

26 (7) "Renewable energy system" means a solar energy system, an  
27 anaerobic digester as defined in RCW 82.08.900, or a wind generator  
28 used for producing electricity.

29 (8) "Solar energy system" means any device or combination of  
30 devices or elements that rely upon direct sunlight as an energy source  
31 for use in the generation of electricity.

32 (9) "Solar inverter" means the device used to convert direct  
33 current to alternating current in a solar energy system.

34 (10) "Solar module" means the smallest nondivisible self-contained  
35 physical structure housing interconnected photovoltaic cells and  
36 providing a single direct current electrical output.

37 (11) "Stirling converter" means a device that produces electricity  
38 by converting heat from a solar source utilizing a stirling engine.

1       (12) "Qualifying application" means the initial application made by  
2 a program participant for a ten-year annual investment cost recovery  
3 incentive payment pursuant to RCW 82.16.120.

4       **Sec. 3.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to read  
5 as follows:

6       (1)(a) Any individual, business, local governmental entity, not in  
7 the light and power business or in the gas distribution business, or a  
8 participant in a community solar project may apply to the light and  
9 power business serving the situs of the system, each fiscal year  
10 beginning on July 1, 2005, and ending June 30, 2013, for an investment  
11 cost recovery incentive for each kilowatt-hour from a customer-  
12 generated electricity renewable energy system.

13       (b) In the case of a community solar project as defined in RCW  
14 82.16.110(2)(a)(i), the administrator must apply for the investment  
15 cost recovery incentive on behalf of each of the other owners.

16       (c) In the case of a community solar project as defined in RCW  
17 82.16.110(2)(a)(iii), the company owning the community solar project  
18 must apply for the investment cost recovery incentive on behalf of each  
19 member of the company.

20       (2)(a) Before submitting for the first time the application to  
21 qualify for the incentive allowed under subsection (4) of this section,  
22 the applicant must submit to the department of revenue and to the  
23 climate and rural energy development center at the Washington State  
24 University, established under RCW 28B.30.642, a certification in a form  
25 and manner prescribed by the department that includes, but is not  
26 limited to, the following information:

27       (i) The name and address of the applicant and location of the  
28 renewable energy system.

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

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

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

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

4 (A) Any solar inverters and solar modules manufactured in  
5 Washington state;

6 (B) A wind generator powered by blades manufactured in Washington  
7 state;

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

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

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

11 (F) Solar or wind equipment manufactured outside of Washington  
12 state;

13 (iv) That the electricity can be transformed or transmitted for  
14 entry into or operation in parallel with electricity transmission and  
15 distribution systems; and

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

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

26 ~~(3)(a) ((By August 1st of each year application for the incentive  
27 must be made to the light and power business serving the situs of the  
28 system by certification in a form and manner prescribed by the  
29 department that includes, but is not limited to, the following  
30 information:~~

31 ~~(i) The name and address of the applicant and location of the  
32 renewable energy system.~~

33 ~~(A) If the applicant is an administrator of a community solar  
34 project as defined in RCW 82.16.110(2)(a)(i), the application must also  
35 include the name and address of each of the owners of the community  
36 solar project.~~

37 ~~(B) If the applicant is a company that owns a community solar~~

1 ~~project as defined in RCW 82.16.110(2)(a)(iii), the application must~~  
2 ~~also include the name and address of each member of the company;~~

3 ~~(ii) The applicant's tax registration number;~~

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

7 ~~(iv) A statement of the amount of kilowatt hours generated by the~~  
8 ~~renewable energy system in the prior fiscal year.~~

9 ~~(b) Within sixty days of receipt of the incentive certification))~~

10 In order to receive incentive payments pursuant to this section, by  
11 August 1st of each year, each qualifying renewable energy system owner  
12 or administrator must submit a statement of the amount of  
13 kilowatt-hours generated by the renewable energy system in the prior  
14 fiscal year to the light and power business serving the situs of the  
15 system. The statement must be in the form of a sworn affidavit signed  
16 by system owners or, where applicable, system administrators. The  
17 amount of kilowatt-hours generated may be determined by reading an  
18 inverter connected to the system.

19 (b) The light and power business serving the situs of the system  
20 may waive the annual certification requirement established by (a) of  
21 this subsection if the light and power business has the ability to  
22 remotely read kilowatt-hours generated by the renewable energy system.  
23 The light and power business must submit the waiver to the department  
24 in a form and manner prescribed by the department.

25 (c) Within sixty days of receipt of the incentive certification, or  
26 where a waiver is applicable, by October 1st of each year, the light  
27 and power business serving the situs of the system must notify the  
28 applicant in writing whether the incentive payment will be authorized  
29 or denied. ((The business may consult with the climate and rural  
30 energy development center to determine eligibility for the incentive  
31 payment.)) Incentive certifications and the information contained  
32 therein are subject to disclosure under RCW 82.32.330(3)(1).

33 ~~((e))~~ (d)(i) Persons, administrators of community solar projects,  
34 and companies receiving incentive payments must keep and preserve, for  
35 a period of five years, suitable records as may be necessary to  
36 determine the amount of incentive applied for and received. Such  
37 records must be open for examination at any time upon notice by the  
38 light and power business that made the payment or by the department.

1 If upon examination of any records or from other information obtained  
2 by the business or department it appears that an incentive has been  
3 paid in an amount that exceeds the correct amount of incentive payable,  
4 the business may assess against the person for the amount found to have  
5 been paid in excess of the correct amount of incentive payable and must  
6 add thereto interest on the amount. Interest is assessed in the manner  
7 that the department assesses interest upon delinquent tax under RCW  
8 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 business may authorize  
11 additional payment.

12 (4) Except for community solar projects, the investment cost  
13 recovery incentive may be paid fifteen cents per economic development  
14 kilowatt-hour unless requests exceed the amount authorized for credit  
15 to the participating light and power business. For community solar  
16 projects, the investment cost recovery incentive may be paid thirty  
17 cents per economic development kilowatt-hour unless requests exceed the  
18 amount authorized for credit to the participating light and power  
19 business. For the purposes of this section, the rate paid for the  
20 investment cost recovery incentive may be multiplied by the following  
21 factors:

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

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

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

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

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

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

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

5 (d) Where the applicant is a company owning a community solar  
6 project that has applied for an investment cost recovery incentive on  
7 behalf of its members, each member of the company is eligible for an  
8 incentive that would otherwise belong to the company but only in  
9 proportion to each ownership share of the company, up to five thousand  
10 dollars per year. The company itself is not eligible for incentives  
11 under this section.

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

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

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

23 (8) The environmental attributes of the renewable energy system  
24 belong to the applicant, and do not transfer to the state or the light  
25 and power business upon receipt of the investment cost recovery  
26 incentive.

27 (9)(a) No new renewable energy systems may qualify to receive the  
28 incentive created under this section after June 30, 2013; and

29 (b) No incentive may be paid under this section for kilowatt-hours  
30 generated before July 1, 2005, or after June 30, ((2020)) 2023.

31 **Sec. 4.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to read  
32 as follows:

33 (1) A light and power business ((shall be)) is allowed a credit  
34 against taxes due under this chapter in an amount equal to investment  
35 cost recovery incentive payments made in any fiscal year under RCW  
36 82.16.120. The credit ((shall)) must be taken in a form and manner as  
37 required by the department. The credit under this section for the



1 fiscal year may not exceed one-half percent of the businesses' taxable  
2 power sales due under RCW 82.16.020(1)(b) or one hundred thousand  
3 dollars, whichever is greater. Incentive payments to participants in  
4 a utility-owned community solar project as defined in RCW  
5 82.16.110(2)(a)(ii) may only account for up to twenty-five percent of  
6 the total allowable credit. Incentive payments to participants in a  
7 company-owned community solar project as defined in RCW  
8 82.16.110(2)(a)(iii) may only account for up to five percent of the  
9 total allowable credit. The credit may not exceed the tax that would  
10 otherwise be due under this chapter. Refunds (~~shall~~) may not be  
11 granted in the place of credits. Expenditures not used to earn a  
12 credit in one fiscal year may not be used to earn a credit in  
13 subsequent years.

14 (2) For any business that has claimed credit for amounts that  
15 exceed the correct amount of the incentive payable under RCW 82.16.120,  
16 the amount of tax against which credit was claimed for the excess  
17 payments (~~shall be~~) are immediately due and payable. The department  
18 (~~shall~~) must assess interest but not penalties on the taxes against  
19 which the credit was claimed. Interest (~~shall~~) must be assessed at  
20 the rate provided for delinquent excise taxes under chapter 82.32 RCW,  
21 retroactively to the date the credit was claimed, and (~~shall~~) accrues  
22 until the taxes against which the credit was claimed are repaid.

23 (3) The right to earn tax credits under this section expires (~~June~~  
24 ~~30, 2020~~) July 1, 2023. Credits may not be claimed after June 30,  
25 (~~2021~~) 2024.

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