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**SENATE BILL 5892**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senator Ericksen

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

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

**PART I**

**Clean Energy Jobs**

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

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

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

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

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

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

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

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

(ii) The applicant's tax registration number;

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

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

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

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

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

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

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

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

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

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

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

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

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

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

(ii) The applicant's tax registration number;

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

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

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

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(l).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Community solar project" means:

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

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

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

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

(6) "Eligible electricity" includes:

(a) A community solar project;

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

(c) The alternating current electricity that is generated from a solar energy system owned by a utility customer and located in Washington and installed on that customer's real property that is also provided electricity distributed by the utility. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A solar module manufactured in Washington state;

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

(E) Solar equipment manufactured outside of Washington state;

(iv) Storage system used, if any;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)(i) Utility customers, administrators of community solar projects, and utilities receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records must be open for examination at any time upon notice by the department. If upon examination of any records or from other information obtained by the department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the department may assess against the recipient of the incentive for the amount found to have been paid in excess of the correct amount of incentive payable and must add thereto interest and may assess penalties on the amount. Interest and penalties are assessed in the manner that the department assesses penalties and interest upon delinquent tax under RCW 82.32.050.

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

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

2016: $0.15

2017: $0.14

2018: $0.13

2019: $0.12

2020: $0.11

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

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

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

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

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

(6)(a) No individual, household, business, educational institution, local government entity, or utility is eligible for incentives under this section for otherwise eligible electricity generated in excess of the net kilowatt-hours consumed annually at the metered location.

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

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

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

(iii) 26–30 kilowatts - $20,000

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

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

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

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

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

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

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

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

(10) No incentive may be paid under this section for a qualified solar energy system beginning operation after December 31, 2015, that is net metered under chapter 80.60 RCW, unless the qualified solar energy system qualifies for net metering under section 309 of this act.

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

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

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

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

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

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

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

**PART II**

**Solar Energy and Qualified Solar Energy Systems**

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

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

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

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

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

(a) That is located in Washington;

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

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

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

(i) An electric utility; or

(ii) A solar energy services company.

(4) "Solar energy services company" means a private entity, which is not an electric utility, that for financial benefit provides a utility customer with a solar energy system or the electricity from a solar energy system for use on the premises of the customer. This form of transaction for facilities, electricity, or power may include: A lease of generating equipment by the vendor to the utility customer; a power purchase agreement where the vendor is compensated according to the kilowatt-hours delivered to the utility customer; a lease from the utility customer to the vendor and a sale of power by the vendor back to the utility customer; or other compensation for the delivery of electricity to the utility customer by the vendor. A solar energy services company is not: (a) A commercial lender that provides loans for the purchase of a solar energy system that is regulated by the department of financial institutions; or (b) an entity that sells or installs solar energy systems at retail.

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

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

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

(2) An electric utility or solar energy services company that offers a qualified solar energy system program to utility customers must ensure open and fair access through competitive bidding of systems and licensed contractors for installation of these systems. The electric utility or solar energy services company must ensure a reasonable price for solar energy systems through the use of a skilled local work force and a diversity of businesses in implementing the program.

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

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

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

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

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

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

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

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

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

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

(6) If an electric utility chooses not to submit a solar energy program design to the commission or appropriate governing board as described in this section within one year of the effective date of this section or, if submitted, the commission or appropriate governing board has not approved a program design within two years from the effective date of this section, a solar energy services company may offer qualified solar energy systems directly to that utility's customers, compliant with sections 304 and 305 of this act.

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

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

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

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

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

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

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

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

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

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

**PART III**

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

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

(2) Qualified solar energy systems that apply for and collect incentives under this chapter are not eligible as a net metering system in chapter 80.60 RCW. However, a utility may choose to allow the solar energy system to qualify as a net metering system under section 309 of this act.

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

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

(1) The legislature finds that:

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

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

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

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

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

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

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

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

(b) The commission has determined that the expenditures were incurred in conformance with the terms and conditions of a conservation service tariff in effect with the commission at the time the costs were incurred, and at the time of such determination the commission finds that the company has proven that the costs were prudent, that the terms and conditions of the financing are reasonable, and that financing under this chapter is more favorable to the customer than other reasonably available alternatives;

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

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

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

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

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

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

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

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

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

(5) "Electric utility" means an electrical company regulated under this title, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The commission may suspend or revoke a registration upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the registered solar energy service company or its agent has repeatedly violated this chapter, the rules of the commission, or the laws of this state or of the United States.

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

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

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

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

(b) Cooperate with commission investigations of customer complaints;

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

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

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

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

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

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

(vi) A description of warranties provided;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) At the termination of a qualified solar energy system consumer contract, whether at the end of the contract term or earlier, the solar energy service company is responsible for the removal of the qualified solar energy system from the property. The solar energy service company may recover the cost of such removal only as specified in the lease and noted in the recorded memorandum.

(6) A consumer contract may not:

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

(b) Require arbitration of disputes; or

(c) Require other contract prohibitions.

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

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

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

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

(a) Charge the customer-generator a monthly or volumetric fee that is different than that charged for other customers of the utility in the same rate class, as determined by the commission, in the case for an electrical company, or the appropriate governing body in the case of other electric utilities. The monthly or volumetric fee may include standby, customer, demand, capacity, interconnection, or other fees or charges, and must ensure that all costs caused by the net metering system or qualified solar energy system are paid by the customer-generator, and ensure that costs are not shifted within any rate class from net metered customers in that rate class to nonnet metered customers in that rate class; or

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

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

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

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

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

**PART IV**

**Miscellaneous Provisions**

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

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