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HOUSE BILL 1097

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Morris, Hudgins, and Moeller

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1 AN ACT Relating to policies to promote clean energy job growth by  
2 encouraging installation of renewable energy systems; amending RCW  
3 82.16.110, 82.16.130, 82.16.120, and 80.28.075; reenacting and  
4 amending RCW 80.04.010; adding new sections to chapter 82.16 RCW;  
5 adding new sections to chapter 80.28 RCW; adding a new chapter to  
6 Title 19 RCW; providing an effective date; and declaring an  
7 emergency.

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

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

11 It is the intent of the legislature, in modifying the existing  
12 renewable energy investment cost recovery incentive program, to  
13 improve utilization of the incentive by residents, utilities, and  
14 businesses in the state, streamline program administration, and  
15 incubate the development of clean energy technology. The clean  
16 technology sector of Washington's economy has been experiencing rapid  
17 growth, even in a time when other sectors have been stagnant or in a  
18 recession. In enacting incentives for renewable energy systems, the  
19 legislature intends to continue to grow a vibrant clean technology  
20 sector in Washington.

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

3       The definitions in this section apply throughout this chapter  
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 (2)(a)(i) of this section that  
7 is responsible for applying for the investment cost recovery  
8 incentive on behalf of the other owners and performing such  
9 administrative tasks on behalf of the other owners as may be  
10 necessary, such as receiving investment cost recovery incentive  
11 payments, and allocating and paying appropriate amounts of such  
12 payments to the other owners.

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

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

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

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

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

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

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

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

38       (III) A mutual corporation or association formed under chapter  
39 24.06 RCW; and

40       (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  
3 revenue 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  
6 service.

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

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

22 (5) "Eligible electricity" means:

23 (a) Electricity generated by a community solar project;

24 (b) Electricity generated by a renewable energy system located in  
25 Washington, where the customer owns the real property where the  
26 system is installed and does not merely possess a leasehold interest,  
27 and the system is provided electricity generated by a utility;

28 (c) Electricity generated by a leased energy system; or

29 (d) Customer-generated electricity generated by a renewable  
30 energy system for which a person or entity applied for incentive  
31 payments prior to July 1, 2015.

32 (6) "Leased energy system" means a renewable energy system that  
33 is located in Washington and installed on a person or entity's real  
34 property that is not leased, where the situs of the real property is  
35 provided electricity by an electric utility, and where the renewable  
36 energy system is:

37 (a) Owned by a third-party vendor that has a contract with a  
38 customer of an electric utility to lease a renewable energy system;  
39 or

1 (b) Owned by an electric utility that has a contract with a  
2 customer of an electric utility to lease a renewable energy system;  
3 or

4 (c) Owned by a consumer-owned electric utility or the customer of  
5 a consumer-owned electric utility, where:

6 (i) The utility has a contract with the customer to provide the  
7 customer access to the electricity generated by the renewable energy  
8 system;

9 (ii) The contract involves some form of compensation for value  
10 received but is not limited to a lease or other utility-financed  
11 arrangement;

12 (iii) The effective annual interest rate that the customer will  
13 pay on any contract that is structured as a loan or financial product  
14 other than a lease does not exceed one percent; and

15 (iv) Although such contract is not a lease, the utility complies  
16 with any requirements established in Title 80 RCW for a consumer-  
17 owned electric utility providing consumers access to a leased  
18 renewable energy system.

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

23 ~~((+6))~~ (8) "Photovoltaic cell" means a device that converts  
24 light directly into electricity without moving parts.

25 ~~((+7))~~ (9) "Renewable energy system" means a solar energy  
26 system, an anaerobic digester as defined in RCW 82.08.900, or a wind  
27 generator used for producing electricity.

28 ~~((+8))~~ (10) "Solar energy system" means any device or  
29 combination of devices or elements that rely upon direct sunlight as  
30 an energy source for use in the generation of electricity.

31 ~~((+9))~~ (11) "Solar inverter" means the device used to convert  
32 direct current to alternating current in a solar energy system.

33 ~~((+10))~~ (12) "Solar module" means the smallest, environmentally  
34 and electrically sealed, nondivisible self-contained physical  
35 structure housing interconnected photovoltaic cells and providing a  
36 single direct current electrical output when exposed to sunlight.

37 ~~((+11))~~ (13) "Stirling converter" means a device that produces  
38 electricity by converting heat from a solar source utilizing a  
39 stirling engine.

1       (14) "Storage system" means a system or technology that can store  
2 electricity generated by a renewable energy system or systems at up  
3 to twenty percent of the maximum total daily output of the renewable  
4 energy system or systems to which the storage system is coupled. A  
5 storage system can be coupled to a renewable energy system on the  
6 premises where the system is located or can be coupled to multiple  
7 systems on any premises served by the distribution feeder where the  
8 renewable energy systems are located.

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

11       (16)(a) "Made in Washington solar module" means a solar module  
12 that is manufactured in Washington and meets the following criteria:

13       (i) The definition of manufacturing as defined in WAC 458-20-136  
14 as of January 1, 2015; and

15       (ii) The solar module is produced at a manufacturing facility  
16 located in Washington that is registered and authorized to  
17 manufacture and apply the UL 1703 certification mark for that solar  
18 photovoltaic module by underwriters laboratory (UL), or an equivalent  
19 UL-approved independent certification agency; and

20       (iii) The UL 1703 certification mark for the solar module, as  
21 approved by UL or an equivalent UL-approved independent certification  
22 agency, must be physically applied to the module at the manufacturing  
23 facility described in (a)(ii) of this subsection (16).

24       (b) For purposes of (a) of this subsection (16), the act of  
25 simply attaching a microinverter, direct current optimizer, or other  
26 power electronics to a solar photovoltaic module that has received UL  
27 1703 certification marks outside Washington from UL, or an equivalent  
28 UL-approved independent certification agency, may not be considered  
29 manufactured in Washington.

30       (17) "Washington State University energy program" means the  
31 Washington state university extension energy program.

32       NEW SECTION. Sec. 3. A new section is added to chapter 82.16  
33 RCW to read as follows:

34       (1) Beginning July 1, 2015, a person or entity who has applied  
35 for an incentive payment under RCW 82.16.120 on or before June 30,  
36 2015, and was eligible to receive such an incentive payment may apply  
37 to receive additional incentive payments for eligible electricity, as  
38 provided in this section.

1 (2)(a) Except as provided in (b) of this subsection, the person  
2 or entity may receive incentive payments for eligible electricity  
3 generated through June 30, 2021, or for a total of ten years from the  
4 date of certification under RCW 82.16.120, whichever date comes  
5 first.

6 (i) A certification, once issued, may not be retroactively  
7 changed due to evolutionary standards or interpretations of the  
8 program administrators.

9 (ii) Certification of a renewable energy system follows the  
10 system with the transfer of property.

11 (b) For a person or entity submitting an initial application for  
12 certification between February 15, 2015, and June 30, 2015, the  
13 person or entity may receive incentive payments for eligible  
14 electricity generated for a total of ten years from the initial date  
15 of certification under RCW 82.16.120 and is not subject to the June  
16 30, 2021, limitation in (a) of this subsection.

17 (3) By July 1, 2015, the department must transfer to the  
18 Washington State University energy program all records necessary to  
19 carry out the remaining incentive payments due under this section.

20 (4) In order to continue to receive incentive payments under the  
21 authority of this section, any person, administrator of a community  
22 solar project, or company that received incentive payments under RCW  
23 82.16.120 must pay a one-time administrative fee to the Washington  
24 State University energy program and submit an application for  
25 certification, as provided in section 4 of this act. The Washington  
26 State University energy program is authorized to establish such fee  
27 as necessary in order to process records required to administer the  
28 program and make available incentive payments under this section.

29 (5) Each year, by August 1st, the applicant must apply to the  
30 Washington State University energy program to receive the incentive  
31 payment, following the application process established in section 4  
32 of this act.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.16  
34 RCW to read as follows:

35 (1)(a) Except as provided in (f) of this subsection, beginning  
36 July 1, 2015, any person, entity, utility, or administrator or  
37 company owner of a community solar project may apply to the  
38 Washington State University energy program for the Washington State  
39 University energy program to issue a certification authorizing the

1 utility serving the situs of the system to remit an annual investment  
2 cost recovery incentive for each economic development kilowatt-hour  
3 of eligible electricity generated.

4 (b) Annual investment cost recovery incentives allowed under this  
5 subsection for a system that is a leased energy system may not be  
6 assigned to a financial institution.

7 (c) Annual investment cost recovery incentives allowed under this  
8 subsection for a system that already received incentive payments  
9 under RCW 82.16.120 are subject to the limitations established in  
10 section 3 of this act.

11 (d) In the case of a community solar project as defined in RCW  
12 82.16.110(2)(a)(i), the administrator must apply for the investment  
13 cost recovery incentive on behalf of each of the other owners.

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

18 (f) Where a utility is directly claiming, under RCW 82.16.130, a  
19 tax credit for eligible electricity produced by a leased energy  
20 system, no person or entity other than the utility may apply for  
21 certification under this section.

22 (2)(a) Before submitting to the Washington State University  
23 energy program for the first time the certification for the incentive  
24 allowed under subsection (1) of this section, the applicant must  
25 submit to the Washington State University energy program a processing  
26 fee and an application for certification, in a form and manner  
27 prescribed by the Washington State University energy program that  
28 includes, but is not limited to, the following information:

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

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

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

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

39 (iii) An affidavit that the premises on which the system applying  
40 for the incentive either:

1 (A) Is not receiving, and has not received, any incentive under  
2 RCW 82.16.120; or

3 (B) For certification applications submitted after July 1, 2015,  
4 pursuant to section 3 of this act, a statement of the date of the  
5 notification from the department stating that the renewable energy  
6 system was eligible to receive incentives under RCW 82.16.120;

7 (iv) That the electricity produced by the applicant meets the  
8 definition of eligible electricity, and that the renewable energy  
9 system produces electricity with:

10 (A) Any solar inverters and made in Washington solar modules;

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

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

14 (D) A made in Washington solar module;

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

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

18 (v) Storage system used, if any;

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

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

26 (viii) The date that the renewable energy system received its  
27 final electrical permit from the applicable local jurisdiction, as  
28 well as a copy of the permit; and

29 (ix) Any other information the Washington State University energy  
30 program deems would be helpful in facilitating the review of the  
31 performance of the tax preferences by the joint legislative audit and  
32 review committee, as described in section 6 of this act.

33 (b) Within thirty days of receipt of the application for  
34 certification and the final electrical permit from the local  
35 jurisdiction, the Washington State University energy program must  
36 notify the applicant and the utility serving the situs of the system  
37 by mail, or electronically, whether the renewable energy system  
38 qualifies and is certified for an incentive under this section.  
39 System certifications and the information contained therein are  
40 subject to disclosure under RCW 82.32.330(3)(1).



1 (c) Except as provided in section 3 of this act, once a system is  
2 certified by the Washington State University energy program to be  
3 eligible for the incentive, that certification is valid for ten years  
4 and may not be retroactively changed due to evolutionary standards or  
5 interpretations by the Washington State University energy program or  
6 the department, except for errors in the original application or  
7 certification. Certification of a renewable energy system follows the  
8 system with the transfer of property.

9 (3)(a) After a system is certified by the Washington State  
10 University energy program, an initial application for the incentive  
11 under this section must be made to the department and the  
12 participating utility serving the situs of the system in a form and  
13 manner prescribed by the Washington State University energy program,  
14 after consultation with the department, that includes, but is not  
15 limited to, the following information:

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

18 (A) If the applicant is an administrator of a community solar  
19 project, the application must also include the name and address of  
20 each of the owners of the community solar project.

21 (B) If the applicant is a company that owns a community solar  
22 project, the application must also include the name and address of  
23 each member of the company.

24 (C) If the applicant is a utility, the person designated by the  
25 utility;

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

27 (iii) The date of the notification from the Washington State  
28 University energy program stating that the renewable energy system is  
29 certified and eligible for the incentives under this section.

30 (b) Within sixty days of receipt of notification of the  
31 application and approval by the department, the utility serving the  
32 situs of the system must notify the department of any abnormal  
33 production claims and, if none are identified, must issue the  
34 incentive payment.

35 (c) After the first year in which an incentive payment has been  
36 authorized by the utility as provided under (b) of this subsection,  
37 persons receiving the incentive must provide a statement, by August  
38 1st of each year, in the form of a signed affidavit to the department  
39 of the amount of kilowatt-hours of eligible electricity generated by,  
40 and the amount of economic development kilowatt-hours attributable

1 to, the renewable energy system in the prior fiscal year. The amount  
2 of eligible electricity generated, in kilowatt-hours, may be  
3 determined from a reading of the inverter or production meter  
4 connected to the system, at the option of the utility. The amount of  
5 economic development kilowatt-hours must be calculated by the amount  
6 of eligible electricity multiplied by the multipliers certified in  
7 the system certification.

8 (d) Persons and entities applying to receive incentives must take  
9 a digital photo on the last day of each fiscal year of the production  
10 meter or inverter reading and must keep and preserve, for a period of  
11 five years, the digital photo as may be necessary to verify, upon  
12 request, that the correct amount of incentive was applied for and  
13 received.

14 (e) The department must calculate, for the prior fiscal year, and  
15 provide to the utility the amount of the incentive payment due to  
16 each utility customer, utility, and community solar project, located  
17 on the premises serviced by that utility and the total amount of  
18 credit for each utility against tax due under this chapter. The  
19 utility must report to the department any abnormal production claims.

20 (f)(i) Persons and entities receiving incentive payments must  
21 keep and preserve, for a period of five years, suitable records as  
22 may be necessary to determine the amount of incentive applied for and  
23 received. Such records must be open for examination at any time upon  
24 notice by the department. If upon examination of any records or from  
25 other information obtained by the department it appears that an  
26 incentive has been paid in an amount that exceeds the correct amount  
27 of incentive payable, the department may assess against the person  
28 that received the excess incentive for the amount found to have been  
29 paid in excess of the correct amount of incentive payable and must  
30 add thereto interest and may assess penalties on the amount. Interest  
31 and penalties are assessed in the manner that the department assesses  
32 penalties and interest upon delinquent tax under RCW 82.32.050,  
33 except that interest and penalties must be deducted from any future  
34 incentive payments that may be due.

35 (ii) If it appears that the amount of incentive paid is less than  
36 the correct amount of incentive payable, the department may authorize  
37 additional payment to the utility or utility customer certified to  
38 receive incentives and additional credit due to the utility.

39 (iii) If the department finds that a person has falsely reported  
40 annual electricity production or consumption under this section with

1 the intent to claim entitlement to a greater incentive payment than  
2 the person is eligible to receive under this section, the department  
3 must impose a penalty, deducting from any incentive payment that  
4 would otherwise be due the sum of five hundred dollars or fifty  
5 percent of the incentive payment due, whichever is greater.

6 (4) Once a system is certified by the Washington State University  
7 energy program and has been authorized by and has signed an  
8 interconnection agreement with the utility serving the situs of the  
9 system, it will be considered to have commenced operation.

10 (a) Except for community solar projects, the eligible electricity  
11 base rate used to calculate the investment cost recovery incentive,  
12 payable for a period of ten years from commencement of operation,  
13 must be based on the year in which the system commenced operation as  
14 follows:

15	2015:	\$0.15;
16	2016:	\$0.14;
17	2017:	\$0.13;
18	2018:	\$0.12;
19	2019:	\$0.11;

20 (b) For community solar projects, the eligible electricity base  
21 rate used to calculate the investment cost recovery incentive,  
22 payable for a period of ten years from commencement of operation,  
23 equals thirty cents per economic development kilowatt-hour.

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

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

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

34 (c) For eligible electricity produced using an anaerobic  
35 digester, or by other solar equipment or using a wind generator  
36 equipped with blades manufactured in Washington state, one;

37 (d) For all other eligible electricity produced by wind, eight-  
38 tenths; and

1 (e) For eligible electricity using a storage system, seven-  
2 tenths.

3 (6)(a) No person, entity, or utility is eligible for incentives  
4 under this section for otherwise eligible electricity generated in  
5 excess of the net kilowatt-hours consumed annually at the metered  
6 location.

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

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

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

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

13 (iv) Over 30 kilowatts - \$25,000

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

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

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

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

32 (7) The Washington State University energy program must establish  
33 a list of eligible solar module components and may consult with  
34 various experts in developing the list.

35 (8) The environmental attributes of the renewable energy system  
36 belong to the applicant except in the case of a renewable energy  
37 system leased from a utility, in which case the attributes belong to  
38 the utility.

1 (9) No incentive may be paid under this section for kilowatt-  
2 hours generated by a system that commences operation after December  
3 31, 2019.

4 (10) No incentive may be paid under this section for a leased  
5 energy system beginning operation after December 31, 2016, that is  
6 net metered under chapter 80.60 RCW.

7 (11) Each system qualifying for incentives under this section  
8 must have a production meter or inverter and interconnects with the  
9 utility's system in a manner that allows the utility to measure the  
10 total amount of electricity consumed on the premises.

11 (12) The Washington State University energy program may charge  
12 applicants a fee to process applications for certification under this  
13 section. In order to establish a fee amount, the Washington State  
14 University energy program must examine the last two years of  
15 application activities at the department and determine the reasonable  
16 cost associated with the processing of an application. Any overage of  
17 the collection of fees must be carried over to the next fiscal year  
18 to reduce the cost of the Washington State University energy program  
19 administering the program.

20 **Sec. 5.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to  
21 read as follows:

22 (1) A (~~light and power business shall~~) utility issuing  
23 incentive payments under RCW 82.16.120 or section 3 or 4 of this act  
24 must be allowed a credit against taxes due under this chapter in an  
25 amount equal to investment cost recovery incentive payments made in  
26 any fiscal year under RCW 82.16.120, section 3 of this act, and  
27 section 4 of this act. The credit (~~shall~~) must be taken in a form  
28 and manner as required by the department. The credit under this  
29 section for the fiscal year may not exceed one-half percent of the  
30 (~~businesses'~~) utility's taxable power sales due under RCW  
31 82.16.020(1)(b) or (~~one~~) two hundred fifty thousand dollars,  
32 whichever is greater. Incentive payments to participants in a  
33 utility-owned community solar project as defined in RCW  
34 82.16.110(2)(a)(ii) or section 3 of this act may only account for up  
35 to twenty-five percent of the total allowable credit. Incentive  
36 payments to participants in a company-owned community solar project  
37 as defined in RCW 82.16.110(2)(a)(iii) or section 3 of this act may  
38 only account for up to five percent of the total allowable credit.  
39 The credit may not exceed the tax that would otherwise be due under

1 this chapter. Refunds shall not be granted in the place of credits.  
2 Expenditures not used to earn a credit in one fiscal year may not be  
3 used to earn a credit in subsequent years. Incentive payments for  
4 leased energy systems may not claim more than forty-five percent of  
5 the total allowable credit. Incentive payments for renewable energy  
6 systems greater than ten kilowatts may not claim more than fifty  
7 percent of the total allowable credit.

8 (2) For any (~~business~~) utility that has claimed credit for  
9 amounts that exceed the correct amount of the incentive payable under  
10 RCW 82.16.120 or section 4 of this act, the amount of tax against  
11 which credit was claimed for the excess payments (~~shall be~~) is  
12 immediately due and payable. The department (~~shall~~) must assess  
13 interest but not penalties on the taxes against which the credit was  
14 claimed. Interest (~~shall~~) must be assessed at the rate provided for  
15 delinquent excise taxes under chapter 82.32 RCW, retroactively to the  
16 date the credit was claimed, and (~~shall~~) accrues until the taxes  
17 against which the credit was claimed are repaid.

18 (3) Each utility making incentive payments and claiming tax  
19 credits pursuant to this section must post on its web site and update  
20 quarterly a report of the allowable credit limits for various system  
21 types and sizes established under subsection (1) of this section and  
22 an estimate of the amount of credit that has not yet been allocated  
23 for incentive payments to certified renewable energy systems the  
24 situs of which is served by the utility.

25 (4) The right to earn tax credits under this section expires June  
26 30, (~~2020~~) 2028. Credits may not be claimed after June 30, (~~2021~~)  
27 2029.

28 NEW SECTION. Sec. 6. A new section is added to chapter 82.16  
29 RCW to read as follows:

30 (1) This section is the tax preference performance statement for  
31 the tax preference and incentives created under RCW 82.16.130 and  
32 sections 3 and 4 of this act. This performance statement is only  
33 intended to be used for subsequent evaluation of the tax preference  
34 and incentives. It is not intended to create a private right of  
35 action by any party or be used to determine eligibility for  
36 preferential tax treatment or for certification under section 4 of  
37 this act.

38 (2) The legislature categorizes the tax preference and incentive  
39 created in this act as intended to induce certain designated behavior

1 by taxpayers, as indicated in RCW 82.32.808(2)(a), and to create or  
2 retain jobs, as indicated in RCW 82.32.808(2)(c).

3 (3)(a) The legislature's public policy objective is to increase  
4 and improve utilization of clean energy technology in Washington by  
5 providing the incentive in section 3 of this act and the credit in  
6 section 6 of this act.

7 (b) It is also the objective of the legislature to increase the  
8 number of jobs in the clean energy technology industry in Washington.  
9 It is the legislature's intent to provide the incentives in sections  
10 3 and 4 of this act and the credit in RCW 82.16.130 in order to  
11 reduce the costs associated with installing and operating clean  
12 energy systems by persons or entities receiving an incentive in  
13 sections 3 and 4 of this act and to reduce the costs for providing  
14 those incentives by entities receiving a credit in RCW 82.16.130,  
15 thereby increasing the ability for clean energy technology firms to  
16 access the energy market and expand their operations in Washington,  
17 thereby increasing the number of jobs in the clean energy technology  
18 industry in Washington.

19 (4) As part of its 2019 tax preference reviews conducted under  
20 chapter 43.136 RCW, the joint legislative audit and review committee  
21 must review the tax preferences and incentives in RCW 82.16.120,  
22 82.16.130, and sections 3 and 4 of this act. The legislature intends  
23 for the legislative auditor to recommend extending the expiration  
24 date of the tax preference if a review finds that the following  
25 performance milestones have been met:

26 (a) Increased utilization of the available tax credits, as  
27 evidenced by:

28 (i) A one hundred percent increase in the number of solar energy  
29 systems installed and receiving the incentive, from the 2013  
30 baseline; and

31 (ii) A one hundred percent increase in the total generating  
32 capacity of installed systems, from the 2013 baseline;

33 (b) A decrease over time in the levelized cost of the systems  
34 receiving the tax preferences;

35 (c) Growth of solar-related employment, as evidenced by:

36 (i) An increase in the total number and per capita rate of solar  
37 energy-related jobs in Washington, as reported by a relevant trade  
38 association in the state; and

39 (ii) Achievement of a top ten national ranking for solar energy-  
40 related employment and a top nine ranking for per capita solar

1 energy-related employment, as reported in a nationally recognized  
2 report; and

3 (d) Leveraging of nonstate funds, as measured by a report of the  
4 total dollar value of tax credits awarded within each county and zip  
5 code, and the total amount of nonstate funds leveraged within each  
6 county and zip code.

7 (5) In order to obtain the data necessary to perform the review  
8 in subsection (4) of this section, the joint legislative audit and  
9 review committee may refer to the data collected by the Washington  
10 State University energy program and the department under the  
11 application and certification process established in section 4 of  
12 this act.

13 (6) The department is encouraged to collect, through the  
14 application process, data from persons receiving the incentive  
15 payments created in this act, as necessary, and may collect data from  
16 other interested persons to report on progress toward achieving the  
17 performance milestones listed in subsection (4) of this section.

18 (7) All recipients of tax credits or incentive payments awarded  
19 under this chapter must provide any data requested by the Washington  
20 State University energy program or the joint legislative audit and  
21 review committee for reporting purposes. Failure to comply may result  
22 in the loss of a tax credit award or incentive payment in the  
23 following year.

24 **Sec. 7.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to  
25 read as follows:

26 (1)(a) Any individual, business, local governmental entity, not  
27 in the light and power business or in the gas distribution business,  
28 or a participant in a community solar project may apply to the light  
29 and power business serving the situs of the system, each fiscal year  
30 beginning on July 1, 2005, and ending June 30, 2015, for an  
31 investment cost recovery incentive for each kilowatt-hour from a  
32 customer-generated electricity renewable energy system.

33 (b) In the case of a community solar project as defined in RCW  
34 82.16.110(2)(a)(i), the administrator must apply for the investment  
35 cost recovery incentive on behalf of each of the other owners.

36 (c) In the case of a community solar project as defined in RCW  
37 82.16.110(2)(a)(iii), the company owning the community solar project  
38 must apply for the investment cost recovery incentive on behalf of  
39 each member of the company.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) Within thirty days of receipt of the certification the  
36 department of revenue must notify the applicant by mail, or  
37 electronically as provided in RCW 82.32.135, whether the renewable  
38 energy system qualifies for an incentive under this section. The  
39 department may consult with the climate and rural energy development  
40 center to determine eligibility for the incentive. System

1 certifications and the information contained therein are subject to  
2 disclosure under RCW 82.32.330(3)(1).

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

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

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

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

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

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

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

23 (b) Within sixty days of receipt of the incentive certification  
24 the light and power business serving the situs of the system must  
25 notify the applicant in writing whether the incentive payment will be  
26 authorized or denied. The business may consult with the climate and  
27 rural energy development center to determine eligibility for the  
28 incentive payment. Incentive certifications and the information  
29 contained therein are subject to disclosure under RCW  
30 82.32.330(3)(1).

31 (c)(i) Persons, administrators of community solar projects, and  
32 companies receiving incentive payments must keep and preserve, for a  
33 period of five years, suitable records as may be necessary to  
34 determine the amount of incentive applied for and received. Such  
35 records must be open for examination at any time upon notice by the  
36 light and power business that made the payment or by the department.  
37 If upon examination of any records or from other information obtained  
38 by the business or department it appears that an incentive has been  
39 paid in an amount that exceeds the correct amount of incentive  
40 payable, the business may assess against the person for the amount

1 found to have been paid in excess of the correct amount of incentive  
2 payable and must add thereto interest on the amount. Interest is  
3 assessed in the manner that the department assesses interest upon  
4 delinquent tax under RCW 82.32.050.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (10) An individual, business, local governmental entity, not in  
28 the light and power business or in the gas distribution business, or  
29 a participant in a community solar project who has applied for and  
30 received an incentive under this section may continue to receive  
31 incentive payments after June 30, 2015, as provided in sections 3 and  
32 4 of this act.

33 NEW SECTION. Sec. 8. (1) It is the intent of the legislature to  
34 provide consumers greater access to leased renewable energy systems.  
35 The ability to lease systems from utilities and third parties will  
36 help minimize the upfront costs of distributed generation, providing  
37 further opportunities for consumers to access the benefits of these  
38 systems.

1 (2) It is the intent of the legislature to provide for consumer  
2 protection of customers leasing renewable energy systems, and to  
3 recognize and encourage electric utility efforts in being early  
4 adopters of programs that promote customers' energy independence.

5 (3) The legislature finds that access to distributed renewable  
6 energy systems installed on residential, commercial, and governmental  
7 real property facilitates energy independence by consumers.

8 (4) The legislature finds that many electric utilities are the  
9 most suitable and responsible entities to ensure the safety and  
10 reliability of renewable energy systems and to provide for consumer  
11 protection with respect to those systems. However, due to the  
12 diversity of electric utilities operating in Washington, the capacity  
13 of electric utilities to make financial investments in a leased  
14 energy program and to fulfill these additional responsibilities  
15 varies. Therefore, the legislature intends to afford electric  
16 utilities some latitude in determining for themselves whether they  
17 are in a position to establish a leased energy program.

18 (5) The legislature recognizes the importance of ensuring public  
19 safety and consumer protection with an appropriate level of  
20 regulation that still allows a competitive marketplace to develop,  
21 and for this reason the legislature confers authority to the  
22 Washington utilities and transportation commission to regulate as  
23 "competitive electrical companies" third-party vendors who provide  
24 leased energy systems directly to consumers and investor-owned  
25 utilities who invest company dollars to make these systems more  
26 widely accessible.

27 NEW SECTION. **Sec. 9.** The definitions in this section apply  
28 throughout this chapter, sections 15 through 18 of this act, and RCW  
29 80.28.075 unless the context clearly requires otherwise.

30 (1)(a) "Biomass energy" includes: (i) Organic by-products of  
31 pulping and the wood manufacturing process; (ii) animal manure; (iii)  
32 solid organic fuels from wood; (iv) forest or field residues; (v)  
33 untreated wooden demolition or construction debris; (vi) food waste  
34 and food processing residuals; (vii) liquors derived from algae;  
35 (viii) dedicated energy crops; and (ix) yard waste.

36 (b) "Biomass energy" does not include: (i) Wood pieces that have  
37 been treated with chemical preservatives such as creosote,  
38 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old  
39 growth forests; or (iii) municipal solid waste.

1 (2) "Competitive electrical company" means: (a) A third-party  
2 vendor; or (b) an investor-owned utility offering a leased energy  
3 program that is outside of its regulated service, registered with the  
4 utilities and transportation commission under section 16 of this act.

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

7 (4) "High efficiency cogeneration" means the sequential  
8 production of electricity and useful thermal energy from a common  
9 fuel source, where, under normal operating conditions, the facility  
10 has a useful thermal energy output of no less than seventy-two  
11 percent of the total energy output.

12 (5) "Leased energy program" means:

13 (a) A program developed by an electric utility under sections 8  
14 through 18 of this act and RCW 80.28.075 to provide customers of the  
15 utility access to leased energy systems; or

16 (b) A program developed by a competitive electrical company to  
17 provide customers served by any utility access to leased energy  
18 systems.

19 (6) "Leased energy system" means a renewable energy system that  
20 is located in Washington and installed on a person or entity's real  
21 property that is not leased, where the situs of the real property is  
22 provided electricity by an electric utility, and the renewable energy  
23 system is:

24 (a) Owned by a third-party vendor that has a contract with a  
25 customer of an electric utility to lease a renewable energy system;  
26 or

27 (b) Owned by an electric utility that has a contract with a  
28 customer of an electric utility to lease a renewable energy system.

29 (7) "Renewable energy system" means a system that generates  
30 electricity from: (a) Water; (b) wind; (c) solar energy; (d)  
31 geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power;  
32 (g) gas from sewage treatment facilities; (h) biodiesel fuel as  
33 defined in RCW 82.29A.135 that is not derived from crops raised on  
34 land cleared from old growth or first-growth forests where the  
35 clearing occurred after December 7, 2006; (i) biomass energy; or (j)  
36 high efficiency cogeneration.

37 (8) "Third-party vendor" means an entity that leases a renewable  
38 energy system directly to electric utility customers. An electric  
39 utility offering a leased energy program directly or through a  
40 contract with a third-party vendor is not a third-party vendor.

1        NEW SECTION.    **Sec. 10.**    (1) Except as provided in subsection (3)  
2 of this section, an electric utility is not liable for any harm,  
3 economic or otherwise, caused to a customer-generator or third-party  
4 vendor by disconnection of:

5        (a) A renewable energy system leased directly to a customer by a  
6 third-party vendor; or

7        (b) A renewable energy system provided to the customer by  
8 contract with a different utility.

9        (2) Such a disconnection may be for safety or reliability  
10 purposes, faulty leased energy system equipment, nonpayment of an  
11 electric bill to the utility by the customer-generator, or violation  
12 by the customer-generator or a third-party vendor of the  
13 interconnection agreement between the utility and customer-generator.

14        (3) An electric utility may not develop or apply standards for  
15 disconnection of a leased energy system that discriminate on the  
16 basis of whether the system is owned by the utility or a third-party  
17 vendor.

18        NEW SECTION.    **Sec. 11.**    (1) An electric utility that offers a  
19 leased energy program shall maintain a registry of qualified  
20 contractors operating in the electric utility's service area that are  
21 licensed to install renewable energy systems. The electric utility  
22 shall provide the names and contact information for the qualified  
23 contractors listed in the registry to customers who have indicated an  
24 interest in the leased energy program, in order to assist customers  
25 in identifying available renewable energy system installment  
26 services.

27        (2) In the case of a consumer-owned utility that is subject to  
28 chapters 54.04 and 39.04 RCW, the consumer-owned utility must follow  
29 applicable laws governing procurement and public works.

30        (3) In the case of an investor-owned utility, the investor-owned  
31 utility shall conduct an open and transparent process to facilitate  
32 participation by qualified contractors.

33        NEW SECTION.    **Sec. 12.**    Electric utilities and third-party  
34 vendors are encouraged to offer to customers the option to purchase  
35 the renewable energy system at the end of the lease term.

36        NEW SECTION.    **Sec. 13.**    (1)(a) In the event that a real property  
37 subject to a renewable energy system lease is sold, the remainder of

1 the lease must be assumed by the buyer if a memorandum has been  
2 recorded reflecting the essential terms of the lease, unless the  
3 seller and buyer agree otherwise. The transfer of ownership of a  
4 property with a lease does not trigger any recertification of a  
5 system previously certified for incentives under chapter 82.16 RCW.  
6 If the buyer of such a property assumes a lease previously certified  
7 for these incentives and authorized by a utility, the buyer continues  
8 to qualify for all applicable incentives as originally certified  
9 under chapter 82.16 RCW, any other benefits of the lease and utility  
10 authorization.

11 (b) Thirty days prior to closing, the seller of property subject  
12 to a lease shall notify any utility and third-party vendor affected  
13 by the lease whether the buyer will assume the lease. Within seven  
14 days of the seller's notice, the utility and third-party vendor shall  
15 provide the documentation necessary for assumption of the lease by  
16 the buyer or the procedures for termination of the lease and removal  
17 of the system. The utility and third-party vendor shall remove the  
18 renewable energy system from a property within twenty-one days of a  
19 written request of the property owner.

20 (c) At the end of the lease term or earlier termination of a  
21 lease, the utility or third-party vendor is responsible for the  
22 removal of the leased energy system from the property and may recover  
23 the cost thereof as specified in the lease and noted in the recorded  
24 memorandum. There are no damages for the premature termination of a  
25 lease unless the amount of the damages is specified as liquidated  
26 damages in the lease.

27 (d) Renewable energy system leases may not grant utilities or  
28 third-party vendors any authority to approve or disapprove the  
29 transfer of real property associated with such a lease.

30 (2) The lessor of a renewable energy system shall guarantee  
31 sufficient funds to properly dispose of the system at the end of the  
32 lease. The lessor is responsible for identifying hazardous and  
33 commercial valuable materials contained in the leased energy system  
34 and how those materials will be properly disposed of or reclaimed.  
35 The lessor must provide this information to the utilities and  
36 transportation commission upon request of the commission.

37 NEW SECTION. **Sec. 14.** (1) The utilities and transportation  
38 commission shall publish, without disclosing proprietary information,  
39 a list of financing models being offered by investor-owned utilities



1 or third-party vendors registered as competitive electrical  
2 companies.

3 (2) If a consumer-owned utility opts to provide a leased energy  
4 program or contracts with a third-party vendor to offer a leased  
5 energy program, the governing board of a consumer-owned utility shall  
6 publish, without disclosing proprietary information, a list of  
7 financing models being offered by the utility or third-party vendor  
8 or vendors contracted by the utility as part of a leased energy  
9 program.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 80.28  
11 RCW to read as follows:

12 (1) The legislature finds that:

13 (a) Third-party vendors of renewable energy systems are  
14 electrical companies as defined in this title and are subject to the  
15 jurisdiction of the commission.

16 (b) A competitive marketplace with effective competition exists  
17 for the provision of leasing and installation of renewable energy  
18 systems in the state of Washington.

19 (c) Traditional rate of return, rate-based regulation of  
20 electrical companies providing leasing and installation of renewable  
21 energy systems does not provide the most efficient and effective  
22 means of achieving the public policy goals of this state as declared  
23 in RCW 80.28.024, 80.28.074, this section, and section 8 of this act.  
24 These goals include promoting the use of renewable energy resources,  
25 maintaining and advancing the efficiency and availability of electric  
26 services, and ensuring that customers pay only reasonable charges  
27 while utilities are afforded flexible pricing.

28 (d) The commission retains its full authority to protect  
29 consumers of renewable energy systems, including and not limited to  
30 consumer protection from deceptive practices, protections to ensure  
31 service quality, and protections provided in RCW 80.28.030. Such  
32 consumer protection may include ensuring that prices and terms of  
33 leases are clearly disclosed to consumers, including requiring  
34 disclosure specifying whether the consumer, the competitive  
35 electrical company, or another entity is entitled to claim and  
36 receive federal, state, or local government incentives. Nothing in  
37 this act precludes the office of the attorney general from exercising  
38 its statutory authority concerning consumer protection.

1 (2) The definitions in section 9 of this act apply throughout  
2 this section unless the context clearly requires otherwise.

3 NEW SECTION. **Sec. 16.** A new section is added to chapter 80.28  
4 RCW to read as follows:

5 (1) A third-party vendor and an electrical company offering a  
6 leased energy program that is outside of its regulated service must  
7 register with the commission as a competitive electrical company  
8 before beginning operations in this state to lease and install  
9 renewable energy systems. The registration must be on a form  
10 prescribed by the commission and contain that information as the  
11 commission may by rule require, but must include at a minimum: The  
12 name and address of the company; the name and address of the  
13 company's registered agent, if any; the name, address, and title of  
14 each officer or director; the company's most current balance sheet;  
15 the company's latest annual report, if any; a description of the  
16 services the company offers or intends to offer; and disclosure of  
17 any pending litigation against it. Registration with the commission  
18 as a competitive electrical company must occur on an annual basis.

19 (2) As a precondition to registration, the commission may require  
20 the procurement of a performance bond or other mechanism sufficient  
21 to cover any advances or deposits the competitive electrical company  
22 may collect from its customers or order that the advances or deposits  
23 be held in escrow or trust.

24 (3) The commission may deny registration to any company that:

25 (a) Does not provide the information required by this section;

26 (b) Fails to provide a performance bond or other mechanism, if  
27 required;

28 (c) Does not possess adequate financial resources to provide the  
29 proposed service; or

30 (d) Does not possess adequate technical competency to provide the  
31 proposed service.

32 (4) The commission shall take action to approve or issue a notice  
33 of hearing concerning any application for registration within thirty  
34 days after receiving the application. The commission may approve an  
35 application with or without a hearing. The commission may deny an  
36 application after a hearing.

37 (5) The commission shall adopt rules that describe the manner by  
38 which it will regulate competitive electrical companies, as well as  
39 the process for considering applications for registration under this

1 title. The rules must at a minimum provide for the protection of  
2 consumers of renewable energy systems.

3 (6) The definitions in section 9 of this act apply throughout  
4 this section unless the context clearly requires otherwise.

5 NEW SECTION. **Sec. 17.** A new section is added to chapter 80.28  
6 RCW to read as follows:

7 (1) Competitive electrical companies must be subject to minimal  
8 regulation. A competitive electrical company shall at a minimum:

9 (a) Keep its accounts according to rules as determined by the  
10 commission;

11 (b) File financial reports with the commission as required by the  
12 commission and in a form and at times prescribed by the commission;

13 (c) Post its prices on a public web site available to all  
14 potential customers;

15 (d) Cooperate with commission investigations of customer  
16 complaints; and

17 (e) At the request of the commission, provide information about  
18 the materials contained in a leased energy system, including all  
19 hazardous wastes and commercially valuable materials used in the  
20 system.

21 (2) Competitive electrical companies shall pay regulatory fees to  
22 the commission as provided under chapter 80.24 RCW.

23 (3) During a state of emergency declared under RCW 43.06.010(12),  
24 the governor may waive or suspend the operation or enforcement of  
25 this section or any portion of this section or under any  
26 administrative rule and issue any orders to facilitate the operation  
27 of state or local government or to promote and secure the safety and  
28 protection of the civilian population.

29 (4) The definitions in section 9 of this act apply throughout  
30 this section unless the context clearly requires otherwise.

31 NEW SECTION. **Sec. 18.** A new section is added to chapter 80.28  
32 RCW to read as follows:

33 (1) Upon request of the commission, investor-owned utilities and  
34 third-party vendors offering leased energy systems must provide  
35 information on the financial terms of leased energy systems currently  
36 under contract. The commission shall use this information to  
37 determine how each party to a lease energy system contract benefits  
38 financially. In compliance with RCW 43.01.036, the commission shall

1 report its findings to the appropriate energy committees of the house  
2 of representatives and senate by December 1, 2018.

3 (2) The definitions in section 9 of this act apply throughout  
4 this section unless the context clearly requires otherwise.

5 **Sec. 19.** RCW 80.28.075 and 1988 c 166 s 2 are each amended to  
6 read as follows:

7 (1) Upon request by a natural gas company or an electrical  
8 company, the commission may approve a tariff that includes banded  
9 rates for:

10 (a) Any nonresidential natural gas or electric service that is  
11 subject to effective competition from energy suppliers not regulated  
12 by the utilities and transportation commission; and

13 (b) Leased energy program services provided by an electrical  
14 company, where the services are outside of the electrical company's  
15 regulated service and are subject to effective competition from  
16 third-party vendors.

17 (2) "Banded rate" means a rate that has a minimum and maximum  
18 rate. Rates may be changed within the rate band upon such notice as  
19 the commission may order.

20 (3) The definitions in section 9 of this act apply throughout  
21 this section unless the context clearly requires otherwise.

22 **Sec. 20.** RCW 80.04.010 and 2011 c 214 s 2 and 2011 c 28 s 1 are  
23 each reenacted and amended to read as follows:

24 As used in this title, unless specifically defined otherwise or  
25 unless the context indicates otherwise:

26 (1) "Automatic location identification" means a system by which  
27 information about a caller's location, including the seven-digit  
28 number or ten-digit number used to place a 911 call or a different  
29 seven-digit number or ten-digit number to which a return call can be  
30 made from the public switched network, is forwarded to a public  
31 safety answering point for display.

32 (2) "Automatic number identification" means a system that allows  
33 for the automatic display of the seven-digit or ten-digit number used  
34 to place a 911 call.

35 (3) "Battery charging facility" includes a "battery charging  
36 station" and a "rapid charging station" as defined in RCW 82.08.816.

37 (4) "Cogeneration facility" means any machinery, equipment,  
38 structure, process, or property, or any part thereof, installed or

1 acquired for the primary purpose of the sequential generation of  
2 electrical or mechanical power and useful heat from the same primary  
3 energy source or fuel.

4 (5) "Commission" means the utilities and transportation  
5 commission.

6 (6) "Commissioner" means one of the members of such commission.

7 (7) "Competitive telecommunications company" means a  
8 telecommunications company which has been classified as such by the  
9 commission pursuant to RCW 80.36.320.

10 (8) "Competitive telecommunications service" means a service  
11 which has been classified as such by the commission pursuant to RCW  
12 80.36.330.

13 (9) "Corporation" includes a corporation, company, association or  
14 joint stock association.

15 (10) "Department" means the department of health.

16 (11) "Electric plant" includes all real estate, fixtures and  
17 personal property operated, owned, used or to be used for or in  
18 connection with or to facilitate the generation, transmission,  
19 distribution, sale or furnishing of electricity for light, heat, or  
20 power for hire; and any conduits, ducts or other devices, materials,  
21 apparatus or property for containing, holding or carrying conductors  
22 used or to be used for the transmission of electricity for light,  
23 heat or power.

24 (12) "Electrical company" includes any corporation, company,  
25 association, joint stock association, partnership and person, their  
26 lessees, trustees or receivers appointed by any court whatsoever  
27 (other than a railroad or street railroad company generating  
28 electricity solely for railroad or street railroad purposes or for  
29 the use of its tenants and not for sale to others), and every city or  
30 town owning, operating or managing any electric plant for hire within  
31 this state. "Electrical company" includes any corporation, company,  
32 association, joint stock association, partnership and person, their  
33 lessees, trustees, or receivers appointed by any court whatsoever  
34 that has contracted with a customer of an electric utility, as  
35 defined in RCW 19.29A.010, to lease to the customer a renewable  
36 energy system, as defined in RCW 82.16.110. "Electrical company" does  
37 not include a company or person employing a cogeneration facility  
38 solely for the generation of electricity for its own use or the use  
39 of its tenants or for sale to an electrical company, state or local  
40 public agency, municipal corporation, or quasi municipal corporation

1 engaged in the sale or distribution of electrical energy, but not for  
2 sale to others, unless such company or person is otherwise an  
3 electrical company.

4 (13) "Facilities" means lines, conduits, ducts, poles, wires,  
5 cables, cross-arms, receivers, transmitters, instruments, machines,  
6 appliances, instrumentalities and all devices, real estate,  
7 easements, apparatus, property and routes used, operated, owned or  
8 controlled by any telecommunications company to facilitate the  
9 provision of telecommunications service.

10 (14) "Gas company" includes every corporation, company,  
11 association, joint stock association, partnership and person, their  
12 lessees, trustees or receiver appointed by any court whatsoever, and  
13 every city or town, owning, controlling, operating or managing any  
14 gas plant within this state.

15 (15) "Gas plant" includes all real estate, fixtures and personal  
16 property, owned, leased, controlled, used or to be used for or in  
17 connection with the transmission, distribution, sale or furnishing of  
18 natural gas, or the manufacture, transmission, distribution, sale or  
19 furnishing of other type gas, for light, heat or power.

20 (16) "LATA" means a local access transport area as defined by the  
21 commission in conformance with applicable federal law.

22 (17) "Local exchange company" means a telecommunications company  
23 providing local exchange telecommunications service.

24 (18) "Noncompetitive telecommunications service" means any  
25 service which has not been classified as competitive by the  
26 commission.

27 (19) "Person" includes an individual, a firm or partnership.

28 (20) "Private shared telecommunications services" includes the  
29 provision of telecommunications and information management services  
30 and equipment within a user group located in discrete private  
31 premises in building complexes, campuses, or high-rise buildings, by  
32 a commercial shared services provider or by a user association,  
33 through privately owned customer premises equipment and associated  
34 data processing and information management services and includes the  
35 provision of connections to the facilities of a local exchange and to  
36 interexchange telecommunications companies.

37 (21) "Private switch automatic location identification service"  
38 means a service that enables automatic location identification to be  
39 provided to a public safety answering point for 911 calls originating  
40 from station lines served by a private switch system.

1           (22)       "Private telecommunications system" means a  
2 telecommunications system controlled by a person or entity for the  
3 sole and exclusive use of such person, entity, or affiliate thereof,  
4 including the provision of private shared telecommunications services  
5 by such person or entity. "Private telecommunications system" does  
6 not include a system offered for hire, sale, or resale to the general  
7 public.

8           (23)       "Public service company" includes every gas company,  
9 electrical company, telecommunications company, wastewater company,  
10 and water company. Ownership or operation of a cogeneration facility  
11 does not, by itself, make a company or person a public service  
12 company.

13          (24)       "Radio communications service company" includes every  
14 corporation, company, association, joint stock association,  
15 partnership, and person, their lessees, trustees, or receivers  
16 appointed by any court, and every city or town making available  
17 facilities to provide radio communications service, radio paging, or  
18 cellular communications service for hire, sale, or resale.

19          (25)       "Service" is used in this title in its broadest and most  
20 inclusive sense.

21          (26)       "System of sewerage" means collection, treatment, and  
22 disposal facilities and services for sewerage, or storm or surface  
23 water run-off.

24          (27)       "Telecommunications" is the transmission of information by  
25 wire, radio, optical cable, electromagnetic, or other similar means.  
26 As used in this definition, "information" means knowledge or  
27 intelligence represented by any form of writing, signs, signals,  
28 pictures, sounds, or any other symbols.

29          (28)       "Telecommunications company" includes every corporation,  
30 company, association, joint stock association, partnership and  
31 person, their lessees, trustees or receivers appointed by any court  
32 whatsoever, and every city or town owning, operating or managing any  
33 facilities used to provide telecommunications for hire, sale, or  
34 resale to the general public within this state.

35          (29)(a)   "Wastewater company" means a corporation, company,  
36 association, joint stock association, partnership and person, their  
37 lessees, trustees, or receivers that owns or proposes to develop and  
38 own a system of sewerage that is designed for a peak flow of twenty-  
39 seven thousand to one hundred thousand gallons per day if treatment

1 is by a large on-site sewerage system, or to serve one hundred or  
2 more customers.

3 (b) For purposes of commission jurisdiction, wastewater company  
4 does not include: (i) Municipal, county, or other publicly owned  
5 systems of sewerage; or (ii) wastewater company service to customers  
6 outside of an urban growth area as defined in RCW 36.70A.030.

7 (30)(a) "Water company" includes every corporation, company,  
8 association, joint stock association, partnership and person, their  
9 lessees, trustees or receivers appointed by any court whatsoever, and  
10 every city or town owning, controlling, operating, or managing any  
11 water system for hire within this state.

12 (b) For purposes of commission jurisdiction, "water company" does  
13 not include any water system serving less than one hundred customers  
14 where the average annual gross revenue per customer does not exceed  
15 three hundred dollars per year, which revenue figure may be increased  
16 annually by the commission by rule adopted pursuant to chapter 34.05  
17 RCW to reflect the rate of inflation as determined by the implicit  
18 price deflator of the United States department of commerce. The  
19 measurement of customers or revenues must include all portions of  
20 water companies having common ownership or control, regardless of  
21 location or corporate designation.

22 (c) "Control" is defined by the commission by rule and does not  
23 include management by a satellite agency as defined in chapter 70.116  
24 RCW if the satellite agency is not an owner of the water company.

25 (d) "Water company" also includes, for auditing purposes only,  
26 nonmunicipal water systems which are referred to the commission  
27 pursuant to an administrative order from the department, or the city  
28 or county as provided in RCW 80.04.110.

29 (e) Water companies exempt from commission regulation are subject  
30 to the provisions of chapter 19.86 RCW. A water company cannot be  
31 removed from regulation except with the approval of the commission.  
32 Water companies subject to regulation may petition the commission for  
33 removal from regulation if the number of customers falls below one  
34 hundred or the average annual revenue per customer falls below three  
35 hundred dollars. The commission is authorized to maintain continued  
36 regulation if it finds that the public interest so requires.

37 (31) "Water system" includes all real estate, easements,  
38 fixtures, personal property, dams, dikes, head gates, weirs, canals,  
39 reservoirs, flumes or other structures or appliances operated, owned,  
40 used or to be used for or in connection with or to facilitate the



1 supply, storage, distribution, sale, furnishing, diversion, carriage,  
2 apportionment or measurement of water for power, irrigation,  
3 reclamation, manufacturing, municipal, domestic or other beneficial  
4 uses for hire.

5 NEW SECTION. **Sec. 21.** Sections 8 through 14 of this act  
6 constitute a new chapter in Title 19 RCW.

7 NEW SECTION. **Sec. 22.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of  
9 the state government and its existing public institutions, and takes  
10 effect July 1, 2015.

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