FINAL BILL REPORT
ESSB 5939

C 36 L 17 E 3
Synopsis as Enacted

Brief Description: Promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ericksen and Palumbo).

Senate Committee on Energy, Environment & Telecommunications
Senate Committee on Ways & Means

Background: Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Program). In 2005, the Legislature created a Cost-Recovery Program to promote renewable energy systems located in Washington that produce electricity from solar, wind, or anaerobic digesters. In 2009, the Legislature expanded the Cost-Recovery Program to include community solar projects that are generally owned by multiple individuals, utilities, or companies. The Cost-Recovery Program expires June 30, 2020.

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

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

Incentive payments to participants in a utility-owned community solar project may only account for up to 25 percent of the total allowable credit. Incentive payments to participants

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

in a company-owned community solar project may only account for up to 5 percent of the total allowable credit.

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

Electronic Products Recycling. Since 2009, the Department of Ecology (Ecology) has overseen E-Cycle, which provides for the recycling of electronic waste at no direct cost to consumers. Covered products include televisions, monitors, computers, laptops, and tablets. Manufacturers fund operations through payments based in part on each manufacturer's in-state market share.

Sales Tax Incentives for Solar Equipment. A sales and use tax exemption for solar energy systems that produce 10 kilowatts of power (kW) or less, or use thermal heat to produce not more than 3 million British thermal units (BTUs) per day, and associated installation charges, expires June 30, 2018. A 75 percent refund of the sales and use tax paid on certain renewable energy systems, including solar energy systems, expires January 1, 2020.

Summary: Cost-Recovery Incentive Program. The Cost-Recovery Program, as currently structured, is closed September 30, 2017. Participants who have entered the program by submitting a certification to the DOR may continue to receive payments through June 2020 at the rates paid in fiscal year 2016 provided they apply to the WSU Energy Program by April 30, 2018.

Cap on Total Public Utility Tax (PUT) Credits Available.The per-utility limit on total public utility taxes available as credit to fund the Cost-Recovery Program and the Production Incentive Program is 1.5 percent of the utility's taxable power sales in 2014, or $250,000, whichever is greater. The WSU Energy Program must not certify additional community solar projects in any fiscal year in which 50 percent of the remaining funds available have already been allocated to community solar projects and shared community solar projects combined. The same is true when 25 percent of the remaining funds have been allocated for commercial-scale systems.

Production Incentive Program. Beginning July 1, 2017, a person who owns a renewable energy system may apply to the WSU Energy Program for certification establishing the person's eligibility to receive annual production incentive payments from the person's utility. A program term lasts for eight years, or until the cumulative incentive payments for electricity produced reach 50 percent of the total system price for all renewable energy systems, whichever comes first.

The following renewable energy systems are eligible:

- residential-scale system that has a nameplate capacity of 12 kW or less;
- commercial-scale system that has a nameplate capacity greater than 12 kW;
- community solar project no larger than 1000 kW; or
- shared commercial solar project, with a nameplate capacity greater than 1 megawatt (MW) but not more than 5 MW.

Prior to obtaining certification, community solar or shared commercial solar projects must apply for precertification against the remaining funds available for incentive payments to guarantee a payment. The WSU Energy Program must also design a precertification system for an applicant for a residential-scale or commercial-scale renewable energy system. The WSU Energy Program must cease issuing certification for the Production Incentive Program when the total incentive payments are likely to exceed $110 million.

No certification may be issued after June 30, 2021. A utility's participation in the Production Incentive Program is voluntary.

Incentive Rates. The incentive rate available depends on the fiscal year (FY) of certification, the system type, and whether the system includes made-in-Washington components, and decline as follows:

FY of system certification	Base rate residential-scale	Base rate commercial-scale	Base rate and shared-commercial solar	Made in Washington bonus
2018	$0.16	$0.06	$0.16	$0.05
2019	$0.14	$0.04	$0.14	$0.04
2020	$0.12	$0.02	$0.12	$0.03
2021	$0.10	$0.02	$0.10	$0.02

Annual Incentive Payment Limit. The WSU Energy Program may authorize an annual payment of up to $5,000 for a residential-scale system or community solar project participant, $25,000 for a commercial-scale system, and $35,000 for a shared commercial solar project.

Recertification of Expanded Systems. If an additional system is added at the same location or billing meter as a commercial-scale or residential-scale system, the applicant may seek recertification of an expanded system. Recertification expires on the same day as the original certification for the residential-scale or commercial-scale and applies to the entire system. The incentive rates and program rules are those in effect as of the date of the recertification.

Ownership of Environmental Attributes. A renewable energy system owner retains ownership of the environmental attributes of the system.

Transfer of Renewable Energy Systems. System certification follows the system if the new owner notifies the WSU Energy Program of the transfer of the renewable energy system and provides an executed interconnection agreement with the utility.

Administration of the Production Incentive Program. Program management, technical review, and tracking responsibilities for administering the Cost-Recovery Program are transferred from DOR to the WSU Energy Program beginning July 1, 2017. The WSU Energy Program must require applicants to provide system operations data, including global positioning system coordinates, tilt, estimated shading, and azimuth. The WSU Energy Program must establish a fee-for-service system to accept electricity production data from the utility or customer to cover the agency's cost in obtaining the necessary information from the

utility or directly from customers by electronic reporting or by mail. The fee may be deducted by the utility from their PUT credit.

The WSU Energy Program must establish a list of equipment eligible for the made-in-Washington bonus rates. The WSU Energy Program must make publicly available online all lists, technical specifications, determinations, and guidelines that it develops.

The WSU Energy Program may establish a one-time fee of $100 per applicant to cover its costs in administering the Production Incentive Program. If the WSU Energy Program determines it is unable to implement the program within the funds provided by the fee, it must report to the Legislature. The WSU Energy Program must submit a report to the legislature by November 1, 2019, with information such as the number of systems that have been certified, the number of utilities that have reached their credit limit, and the types of renewable energy systems. The Legislature must review the report by December 31, 2019, to determine whether the PUT credit limit should be increased.

The DOR may, in consultation with the WSU Energy Program, adopt any rules necessary for administration of the program.

Production Incentive Program Data. System certifications and information contained within these documents are not confidential tax information and are subject to disclosure.

Community Solar Projects. Community solar projects may be up to 1000 kW in size and must have at least ten participants, or one participant for every 10 kW, all of whom must be customers of the utility providing service at the project's location. A utility or nonprofit must administer the project in a transparent manner. Additionally, a Public Utility District (PUD) may enter into an agreement with a Joint Operating Agency (agency) to construct and own a community solar project located on property owned by the agency or that receives electric services from a PUD.

The purpose of a community solar project is to facilitate broad, equitable community investment in and access to solar power. A utility or nonprofit organization may establish a reasonable fee to cover its costs and must give project participants clear and conspicuous notice of the portion of the incentive payment that will be assessed as a fee.

Shared Commercial Solar Project. Beginning July 1, 2017, a utility may organize and administer a shared commercial solar project. A shared commercial solar project must have a direct current nameplate capacity greater than 1 MW but not more than 5 MW, at least five participants, and each participant must be located in Washington Sate and a customer of the utility providing service at the shared commercial solar project.

The administrator of a shared commercial solar project may establish a reasonable fee to cover administrative costs and must provide a disclosure form covering all terms and conditions of participation in the project. It is encouraged that the majority of the installation of shared commercial solar projects be given to contractors based in Washington.

Community Solar Companies. A community solar company is defined as a person, firm, or corporation, other than an electric utility, that owns a community solar project and provides

related services to project participants. A community solar company must register with the Utilities and Transportation Commission (UTC) before engaging in business in the state or applying for certification from the WSU Energy Program under the Production Incentive Program.

The UTC may adopt rules for registering a community solar company and annual reporting requirements, as well as fees for both processing applications and regulation. The UTC may also issue penalties against community solar companies for failure to register with the UTC, and such failures are a violation of the Consumer Protection Act.

Solar Module Stewardship and Takeback Program (Stewardship Program). By January 1, 2018, Ecology must establish a process to develop guidance for a Stewardship Program to guide manufacturers in developing photovoltaic module stewardship plans. The guidance must be completed by January 1, 2019. A stewardship organization may be designated by a manufacturer to operate and implement the Stewardship Program.

Each manufacturer must prepare and submit to Ecology a stewardship plan by January 1, 2020, or within 30 days of its first sale in or into the state, whichever is later. A stewardship plan must include several components including an adequate funding mechanism to finance the costs of the collection, management, and recycling of photovoltaic modules and residuals sold in or into the state by the manufacturer, such that it ensures photovoltaic modules can be delivered to take-back locations without cost to the last owner or holder.

Beginning January 1, 2021, Ecology must enforce stewardship plans. Ecology must send a written warning to a manufacturer that is not participating in a plan and may assess a penalty of up to $10,000 for each sale of a photovoltaic module in or into Washington by a manufacturer after the initial written warning. Penalties may be appealed to the Superior Court of Thurston County within 180 days of receipt of notice. Ecology may adopt rules necessary for implementing, administering, and enforcing the chapter.

Ecology may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process. Ecology may charge every manufacturer an annual fee calculated by dividing additional administrative costs by the manufacturer's pro rata share of the Washington photovoltaic module sales in order to fund administration of the Stewardship Program. All fees collected from manufacturers must be deposited in the photovoltaic module recycling account created in the custody of the State Treasurer.

A manufacturer may participate in a national program in lieu of preparing a stewardship plan under the state program, if it is substantially equivalent to the intent of the state program.

Washington State Housing Finance Commission (WSHFC) Study. The WSHFC must prepare and submit a report to the Legislature by December 31, 2017, that assesses financing tools or models for the aggregation, by public or private entities, of federal tax incentives and other financial benefits accruing from the installation, ownership, and operation of renewable energy systems and other distributed energy resources. Beginning July 1, 2018, WSHFC may implement a financing tool or model for the aggregation of federal tax incentives and

other financial benefits associated with renewable energy systems and distributed energy resources if the WSHFC determines that it is legally, financially, and economically feasible.

Consumer Protection. Any person who sells or installs a solar module in Washington must provide the customer-owner with current information regarding the tax incentives available under law, including the scheduled expiration dates and the length of time a customer may benefit from tax incentives. A violation is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, and may be enforced by the Attorney General under the Consumer Protection Act.

Sales Tax Incentives for Solar Equipment. The expiration date for existing renewable energy sales and use tax exemptions, as applied to solar photovoltaic systems of 500 kW or less, is changed to September 30, 2017.

Votes on Final Passage:

Third Special Session

Senate	47	2
House	74	19

Effective: July 7, 2017