

FINAL BILL REPORT

ESHB 2248

FULL VETO

Synopsis as Enacted

Brief Description: Expanding equitable access to the benefits of renewable energy through community solar projects.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Doglio, DeBolt, Fey, Lekanoff, Fitzgibbon, Shewmake, Leavitt, Ramel, Ryu, Tarleton, Appleton, Ramos, Slatter, Ormsby, Macri, Wylie, Kloba, Goodman, Peterson, Hudgins, Pollet and Tharinger).

House Committee on Environment & Energy
House Committee on Appropriations
Senate Committee on Ways & Means

Background:

Renewable Energy Production Incentive Program.

In 2005 the Renewable Energy Cost Recovery Incentive Payment Program (Legacy Program) was created to allow an individual, business, or local government that owns an eligible renewable energy system to apply to its electric utility for an investment cost recovery incentive payment for each kilowatt-hour (kWh) of electricity produced by the system. In 2009 the Legacy Program was expanded to include community solar projects. In 2017 the Washington State University Extension Energy Program (WSU Energy Program) was directed to launch and administer a new program known as the Renewable Energy Production Incentive Program (Production Incentive Program).

The Legacy Program closed to new customer participants after September 30, 2017. A customer who entered the program by this date was required to apply to the WSU Energy Program by April 30, 2018, in order to continue to receive the incentive payment allowed under the Legacy Program for electricity generated by a renewable energy system through June 30, 2020.

Beginning July 1, 2017, under the Production Incentive Program, a person who owns a renewable energy system, an administrator of a community solar project, a utility, or a business under contract with a utility that administers a shared commercial project, may apply to the WSU Energy Program for certification establishing the applicant's eligibility to

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receive an annual production incentive payment for each kWh of alternating current electricity generated by the system.

Under the Production Incentive Program, the WSU Energy Program is directed to cease issuing new certifications for any renewable energy system if certification is likely to result in total incentive payments made under the Production Incentive Program in excess of \$110 million. Although the application period under the Production Incentive Program extends to June 30, 2021, the WSU Energy Program does not intend to review any applications for certification received after June 14, 2019, because of the \$110 million statewide incentive payment cap.

Community Solar Projects.

Under the Production Incentive Program, a "community solar project" is a solar energy system with a direct current nameplate generating capacity no greater than 1,000 kilowatts. A community solar project with a generating capacity greater than 500 kilowatts must be subject to a standard interconnection agreement with the utility serving the site of the project. A community solar project must be administered by a utility, nonprofit organization, or local housing authority and must have at least 10 participants, or one participant for every 10 kilowatts of direct current nameplate capacity, whichever is greater. Except for community solar projects administered in cooperation with a joint operating agency, each participant must be a customer of the utility providing service at the site of the community solar project.

The administrator of a community solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project.

The Utilities and Transportation Commission (UTC) must publish, without disclosing proprietary information, a list of:

- entities other than utilities that organize and administer community solar projects; and
- community solar projects and related programs and services offered by investor-owned utilities.

If a consumer-owned utility opts to provide a community solar program or contracts with a nonutility administrator to offer a community solar program, the governing body of the consumer-owned utility must publish, without disclosing proprietary information, a list of the nonutility administrators contracted by the utility as part of its community solar program.

Violation of the reporting and disclosure requirements for administrators of community solar projects is a violation of the Consumer Protection Act.

Production Incentive Certification and Payments.

Certification of eligibility under the Production Incentive Program is valid for the program term. "Program term" for a community solar project, shared commercial solar project, or any other renewable energy system, means eight years, or until cumulative incentive payments for electricity produced by the project reach 50 percent of the total system price (including applicable sales tax), whichever occurs first.

The applicant or, in the case of a community solar project or shared commercial solar project, the participant, is entitled to receive incentive payments for electricity generated for the program term from the date the renewable energy system commences operation.

The incentive rate available depends on the fiscal year of certification, the system type, and whether the system is eligible for a made-in-Washington bonus rate. A renewable energy system or community solar project is eligible for a made-in-Washington bonus rate if its solar modules, wind turbine, or tower is made in Washington. The incentive rates available under the Production Incentive Program are as follows:

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

No person, business, or household is eligible to receive production incentive payments of more than:

- \$5,000 per year for residential-scale systems or community solar projects;
- \$25,000 per year for commercial-scale systems; or
- \$35,000 per year for shared commercial solar projects.

Public Utility Tax Credits.

An electric utility may claim a credit against its public utility tax obligations for incentive payments made by the utility to a customer under the Legacy Program or the Production Incentive Program.

An electric utility may claim an annual credit of up to 1.5 percent of its taxable power sales generated in calendar year 2014 or \$250,000, whichever is greater. The credit cannot exceed the amount of tax owed by the utility and cannot be refunded.

No credits may be claimed by an electric utility under the Legacy Program after June 30, 2021. No credits may be claimed by an electric utility under the Production Incentive Program after June 30, 2030.

World Trade Organization Panel Report.

On September 9, 2016, India requested consultations with the United States regarding domestic content requirements and incentives for renewable energy systems instituted by state governments, including Washington. The Request for Consultations specifically named Washington's Renewable Energy Cost Recovery Incentive Payment Program under chapter 82.16 RCW (the Legacy Program) as it existed in 2016.

On June 27, 2019, a World Trade Organization (WTO) panel issued a report finding that the made-in-Washington incentives under the Legacy Program are inconsistent with Article III,

section 4 of the General Agreement on Tariffs and Trade (GATT) 1994 because the incentives provide an advantage for the use of domestic products, which amounts to less favorable treatment for similar imported products. The panel recommended that the WTO's Dispute Settlement Body request the United States to bring the incentives provided under the Legacy Program into conformity with its obligations under the GATT 1994.

The panel report also found that the made-in-Washington bonus rate provided under the Production Incentive Program established in 2017 does not represent an amendment to the bonus rate under the Legacy Program but is instead a distinct measure that falls outside the terms of the panel's reference, and thus was not included in the panel's review or recommendations.

Summary:

Renewable Energy Production Incentive Program.

The application period for the Renewable Energy Production Incentive Program (Production Incentive Program) terminates June 30, 2020, rather than June 30, 2021.

If a community solar project or shared commercial solar project application is in precertification status under the Production Incentive Program as of June 30, 2020, the project applicant must continue in that status until it is certified by the Washington State University Extension Energy Program (WSU Energy Program) by December 31, 2021, or its precertification expires.

Community solar projects that are in precertification status under the Production Incentive Program as of June 30, 2020, may not apply for precertification for that same project under the Community Solar Expansion Program that begins July 1, 2020.

The made-in-Washington bonus rate under the Production Incentive Program is repealed for renewable energy systems certified in fiscal years 2020 or 2021.

Community Solar Expansion Program.

Beginning July 1, 2020, through June 30, 2031, an administrator of an eligible community solar project may submit an application to the WSU Energy Program to receive a precertification for the project. Projects with precertification applications approved by the WSU Energy Program have two years to complete their projects and apply for full certification. By certifying qualified projects, the WSU Energy Program authorizes the utility serving the site of a community solar project in the state to remit a one-time low-income community solar incentive payment to the community solar project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

"Qualifying subscriber" means a low-income subscriber, low-income service provider subscriber, tribal agency subscriber, or public agency subscriber. For tribal agency subscribers and public agency subscribers, only that portion of their subscription to a community solar project demonstrated to benefit low-income beneficiaries is considered a qualifying subscriber.

"Administrator" means the utility, nonprofit, tribal housing authority, or other local housing authority that organizes and administers a community solar project. A tribal housing authority may only administer a community solar project on tribal lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members.

A low-income community solar incentive payment equals the sum of:

- an amount, not to exceed \$20,000 per community solar project, equal to the community solar project's administrative costs related to the administrative start-up of the project for qualifying subscribers; and
- an amount that does not exceed 100 percent of the proportional cost of the share of the community solar project that provides direct benefits to qualifying subscribers.

In addition to the one-time low-income community solar incentive payment, a participating utility must also provide the administrator of a community solar project the following compensation for the generation of electricity from the certified project:

- for a community solar project that has an alternating current nameplate capacity greater than 12 kilowatts but no greater than 100 kilowatts, and that is connected behind the electric service meter, compensation must be determined in accordance with the state's net metering requirements and provided to the metered customer receiving service at the situs of the meter; and
- for all other community solar projects, compensation must be determined at a value set by the participating utility and paid to the administrator or subscribers according to the agreement between the project and the utility.

An administrator may deduct ongoing administrative costs from compensation provided from power generation, provided those costs are identified in the subscription agreement.

If the utility provides compensation for the generation of electricity to the administrator, the administrator of a community solar project must provide that compensation to the project subscribers.

A utility's participation in the Community Solar Expansion Program is voluntary.

The WSU Energy Program may issue certifications authorizing low-income community solar incentive payments in a total statewide amount not to exceed \$20 million and subject to the following dollar limits:

- for fiscal year 2021, \$300,000; and
- for each biennium beginning on or after July 1, 2021, \$5 million.

The WSU Energy Program must attempt to equitably distribute incentive funds throughout the state.

Prior to obtaining certification, the administrator of an eligible community solar project must apply for precertification against the funds available for incentive payments under the Community Solar Expansion Program in order to be guaranteed a low-income community solar incentive payment. The application for precertification must include, at a minimum:

- a demonstration of how the project will deliver direct benefits to low-income subscribers; and

- any other information the WSU Energy Program deems necessary in determining eligibility for precertification.

The WSU Energy Program must collect a one-time fee for precertification applications of \$500 per applicant. The WSU Energy Program must deposit all revenue from this fee into the State General Fund.

The WSU Energy Program must review each project for reasonable cost and financial structure, with a targeted cost of \$3 per watt of installed system capacity designated for a community solar project's qualifying subscribers. The WSU Energy Program may approve an application for a project that costs more or less than \$3 per watt of installed system capacity based on a review of the project, documents submitted by the project applicant, and available data. Project cost evaluations must exclude costs associated with energy storage systems.

The WSU Energy Program may review the cost per watt target prior to each fiscal biennium and is authorized to determine a new cost per watt target.

Within 60 days of receipt of a notification of project certification from the WSU Energy Program, the utility serving the site of the certified community solar project must remit the applicable low-income community solar incentive payment to the project administrator.

No certification may be issued by the WSU Energy Program under the Community Solar Expansion Program after June 30, 2033.

Community Solar Project Eligibility Requirements.

In order to receive certification for a low-income community solar incentive payment beginning July 1, 2020, a community solar project must meet certain requirements, including:

- the administrator of the community solar project must be a utility, nonprofit, tribal housing authority that administers a community solar project on tribal lands or lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members, or other local housing authority;
- the community solar project must have an alternating current nameplate capacity greater than 12 kilowatts but no greater than 199 kilowatts, and must have at least two subscribers or one low-income service provider subscriber; and
- the administrator of the community solar project must provide a verified list of qualifying subscribers.

Public Utility Tax Credits.

Beginning July 1, 2020, an electric utility is allowed a credit against its public utility tax obligations in an amount equal to low-income community solar incentive payments made under the Community Solar Expansion Program.

The PUT credit for the fiscal year may not exceed 1.5 percent of the business's taxable power sales generated in calendar year 2014 or \$250,000, whichever is greater. The credit may not exceed the tax that would otherwise be due. Refunds may not be granted in the place of credits.

The right to earn PUT credits for low-income community solar incentive payments expires June 30, 2034. Credits may not be claimed after June 30, 2035.

Votes on Final Passage:

House	88	10	
Senate	36	12	(Senate amended)
House	89	8	(House concurred)