

# SENATE BILL REPORT

## SB 6541

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As of February 6, 2014

**Title:** An act relating to encouraging reliable distributed renewable energy.

**Brief Description:** Encouraging reliable distributed renewable energy.

**Sponsors:** Senators Ericksen, McCoy and Billig.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/05/14.

### Brief Summary of Bill

- Ends the current cost-recovery program on June 30, 2014, and creates a new cost-recovery program to start on July 1, 2014, with no incentives paid to systems that begin operating after December 31, 2018.
- Authorizes ten-year rolling incentive contracts with declining incentive rates and adjustable incentive caps based on the size of the system.
- Allows educational institutions and utilities to fully participate in the cost-recovery program, with additional incentives for utility participation.
- Charges the Department of Commerce (Commerce) to administer the new cost-recovery program.
- Allows leased energy systems and net-metered systems to receive either cost-recovery incentives or net-metering benefits subject to limitations.
- Requires the Utilities and Transportation Commission (UTC) to regulate third-party vendors of leased systems as competitive electrical companies.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** William Bridges (786-7416)

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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.*

**Background:** Renewable Energy Cost-Recovery Incentive Program. In 2005 the Legislature created a Renewable Energy Cost-Recovery Incentive Program (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 to 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 in a company-owned community solar project may only account for up to 5 percent of the total allowable credit.

Limits on the Generating Capacity of Eligible Systems. Except for limiting community solar projects to a generating capacity of no greater than 75 kilowatts (kW), there are no limitations on the generating capacity of eligible cost-recovery systems. The payment caps do, however, act to limit the size of eligible systems.

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.

Net Metering. Net metering allows electricity customers to offset their consumption of purchased electricity with electricity generated by their own small-scale, renewable systems. Net-metered electricity is valued at the full retail rate. Under current law, a net-metering system must be located on a customer's premises and must generate no more than 100 kW using cogeneration, fuel cells, water, wind, solar energy, or biogas.

Electric utilities must offer to make net metering available to eligible customer-generators on a first-come, first-served basis until the cumulative generating capacity of net-metering systems equals 0.5 percent of the utility's peak demand during 1996.

Third Party Leasing of Net-Metered Systems. In a July 2013 order, the UTC determined that a customer may net meter with a leased system. The UTC stated it would issue an interpretive statement on whether the third-party owner of the system would be subject to UTC regulation as a utility. The statement will be issued sometime after the current legislative session.

**Summary of Bill:** I. Changing the Current Cost-Recovery Program. *Requiring Companies that Own Community Solar Projects to File Affidavits About the Amount of Power Generated by Their Projects.* When applying for its incentive payment, a company owning a community solar project must submit a signed affidavit to its utility on the amount of kWh generated by the project in the prior fiscal year. The amount of kWh may be determined, at the option of the utility, from a reading of the inverter or production meter connected to the system.

*Ending the Current Cost-Recovery Program on June 30, 2014.* Beginning July 1, 2014, no applicant may receive a certification for a cost-recovery incentive under the current program.

II. Creating a New Cost-Recovery Program Similar to the Current Program But with Certain Modifications. *Identifying Length of Time for the New Cost-Recovery Program.* Beginning July 1, 2014, eligible systems may receive cost-recovery incentive payments but no incentives may be paid for a system that begins operating after December 31, 2018.

*Allowing Educational Institutions and Electric Utilities to Participate in the Cost-Recovery Program.* Educational institutions and electric utilities, in addition to individuals, businesses, local governments, and owners of community solar projects, are eligible for cost-recovery incentive payments. The generating capacity of utility-owned projects are limited to 100 kW or less or its thermal equivalent, while other systems are limited to 75 kW or less.

*Changing the Certifying Agencies from DOR and WSU to Commerce.* Before submitting a cost-recovery incentive application to DOE, the applicant must first have the system certified by Commerce, which may consult with WSU to determine eligibility of the renewable system.

*Establishing Additional Attributes of Certification.* A certification of a renewable energy system is good for ten years and follows the system with the transfer of property.

*Requiring Successful Applicants to File Affidavits.* Successful applicants must provide DOR a signed affidavit stating the amount of eligible kWh generated by the renewable energy system in the prior fiscal year. In addition, an affidavit is required stating that the premises where the eligible system is located is not receiving any other cost-recovery incentives.

*Reducing the Base Incentive Rate and Allowing Payments for Ten Years.* The base rate used to calculate the investment cost-recovery incentive, payable for ten years, must be based on the year in which the system commenced operation as follows:

- 2014: \$0.15;
- 2015: \$0.14;
- 2016: \$0.13;
- 2017: \$0.12; and

- 2018: \$0.11.

*Creating an Incentive Multiplier for Energy Storage.* In addition to the current multipliers for the use of in-state manufactured components, a multiplier of seven-tenths is created for the use of a connected storage system, which means a system or technology that can store up to 25 percent of the maximum total daily output of the eligible renewable energy system.

*Establishing Caps on Incentive Payments.* For projects that are not community solar projects, no person is eligible for annual cost-recovery incentive payments for more than the following amounts per system:

- 0-10 kilowatts - \$5,000;
- 11-25 kilowatts - \$15,000;
- 26–30 kilowatts - \$20,000; and
- 31-75 kilowatts - \$25,000.

*Raising the Caps on Credits for the PUT.* Beginning July 1, 2014, a utility must be allowed a credit against its PUT not to exceed \$250,000 or 0.5 percent of its taxable power sales, whichever is greater. The current cap is the greater of \$100,000 or 0.5 percent of taxable power sales. In addition, the payment cap for participants in a utility-owned community solar project, beginning operation after July 1, 2014, is lowered from 25 percent to a maximum of 5 percent of the total allowable credit. Incentive payments claimed by a utility for utility solar projects may only account for up to 45 percent of the total allowable credit. Incentive payments for systems greater than 10 kW may not claim more than 50 percent of the total allowable credit. Cost-recovery credits and incentives may not be claimed for kWh generated after December 31, 2028.

II. Authorizing Leased Energy Systems. *Authorizing Leased Energy Systems by Utilities.* Subject to approval by the UTC or the appropriate governing board, an electric utility may offer a solar energy program that may include leased energy systems. A program for leased energy systems must include a number of factors, such as a fair market value purchase option at the end of the contract and a reasonable process for transferring the obligation to a new owner of the underlying property.

*Authorizing Leased Energy Systems by Private Vendors.* Third-party private vendors may also offer leased energy systems to a utility's customers, but only if the utility does not offer a solar energy program to at least its residential rate class and one additional customer class within (1) one year of the effective date of this bill; or (2) if the program design was not approved by UTC or appropriate governing board after submittal, two years after the effective date of this bill. An electric utility may require additional insurance or other form of indemnification for leased energy systems offered by third-party vendors.

*Requiring Competitive Bids.* An electric utility or third-party vendor offering a leased energy system to net-metered customers must ensure open and fair access through competitive bidding and licensed contractors. The utilities or vendors must ensure a reasonable price for leases or electricity purchases through the use of a skilled local workforce and a diversity of businesses in implementing the programs.

*Definitions.* Among other things, a leased energy system means a renewable energy system in which, on an annual basis, the net electricity fed back into the distribution system of the electric utility is less than or approximately equal to the electricity consumed on the premises where the system is located.

*Intent.* The Legislature intends to provide mechanisms for low-cost financing of energy systems on the distribution side of the electricity grid, to provide for consumer protection of customers of these systems, and to recognize electric utility efforts in being early adopters of programs that encourage energy independence by customers. Among other things, the Legislature finds that it is in the public interest to allow utilities to provide solar energy programs that may include leased energy systems to their customers, and that electric utilities lead in the deployment of solar energy programs to maximize the system reliability and power quality benefits.

III. Regulation of Third-Party Vendors of Leased Energy Systems. *Authorizing UTC Regulation of Third-Party Lessors of Certain Energy Systems.* A third-party vendor offering leased energy systems in the state is subject to UTC jurisdiction as a competitive electrical company and must follow specified requirements, such as financial reporting, public pricing, cooperating with UTC investigations of customer complaints, and paying regulatory fees. The vendor must also register with the UTC, providing such information as the company name, address, and most current balance sheet. The UTC must prescribe the form of registration and may require a performance bond as a precondition to registration.

*Authorizing a Net-Metering Rate.* If all net-metering and leased energy systems interconnected to a utility's distribution system exceed a cumulative generating capacity cap of 0.5 percent of the utility's peak demand in 1996, the utility is no longer required to credit the customer the full retail rate of the generated electricity without any recovery for associated fixed costs. Instead the utility may (1) charge net-metered customers a separate net-metering rate to recover fixed costs as determined by the UTC or the appropriate governing body; or (2) credit the customer the value of the solar power, as determined by the UTC or the appropriate governing body.

*Limiting Incentives for Leased Energy Systems or Net-Metered Systems.* No cost-recovery incentive may be paid to a leased energy system beginning operation after June, 30, 2014, that is net metered, unless the leased energy system is either charged the specified net-metering rate or is credited the specified value of the generated solar power. In addition, cost-recovery incentives paid to a leased system may not be assigned to a financial institution.

*Intent and Findings.* The Legislature finds that solar energy systems and leased energy systems encourage energy independence by customers and that the benefits of energy independence do not justify overlapping incentives. Various findings are made regarding the alternative form of regulation for third-party vendors of leased energy systems and utility costs associated with net metering.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The current program needs to be extended to 2023. The bill broadens the market for businesses and there is support for a rolling a ten-year payment period with declining incentives. There should be greater limits on leased systems and the value of solar power should not be tied to the retail price of electricity. Applicants should be able to receive the benefits of net metering and cost-recovery incentives. The cost-recovery program has created 1300 jobs, supported the creation of a solar manufacturing cluster, and helped reduce carbon emissions. The cost-recovery program supports the manufacturing of local solar panels that are of better quality than Chinese-made panels. The bill maximizes in-state economic development, avoids the problems associated with distributed generation, prevents cost shifting among ratepayers, provides an equitable financial playing field, and encourages utilities to act as agents of change. The bill addresses infrastructure cost shifting among distributed generation and non-distributed generation customers. There should be an equitable financial playing field regardless of provide. It is important for a utility to maintain a direct relationship with its customers for all purposes. The cost-recovery program should be designed to be as administratively efficient as possible, including removing requirements for a production meter installation. This bill properly grandfatheres the Ellensburg Community Solar Project, which has been underway through several phases since 2006. The bill also contains some protections for utilities by preventing further cost shifts to non-net metered customers from net metered customers. Also, it allows utilities to be held harmless for disconnecting customers under certain circumstances involving third party vendors. The bill streamlines the administration of the incentive program.

CON: The bill will hinder solar leasing that allows medium and low-income people to afford solar energy. There is no evidence that utilities are better at deploying solar systems than others or that leased systems have quality problems. The limitations on leasing and the changes to net metering are opposed. There are a number of changes that need additional drafting work, such as better definitions. There is opposition to provisions that would extend utility monopolies to deploying solar systems.

OTHER: Solar leases of 20 plus years present a challenge because there will be situations when the homeowner must sell when they are only a few years into the lease – there must be a clean process for that lease to be transferred to the new owner or paid off by the seller. Hot water heaters, furnaces, and appliances all have problems from time to time, leased solar systems will too. Homeowners should be able to get these problems resolved with local solar companies, installers, and local utilities, which have accountability either through local governing boards, the UTC, or Legislature. Approval of a solar program within two years is too long. There should be criteria or performance measures to ensure each utility offering a program is not intended to block third party vendors from offering services in the state. The UTC should not be an economic regulator of third-party lessors, but should oversight over the provisions of leased systems. The UTC is concerned about cost-shifting provisions in the statute because it is not clear if it is a significant issue in this state, or how to resolve it if it is.

The value of solar energy in the state may be higher than the retail rate of electricity, so it should not be capped at the retail rate of electricity. The proposed restrictions on leased systems are too great. A less-complex approach can be crafted that includes the ability of utilities to develop solar while helping to protect Washington-based installers. Any changes to net metering should be addressed with separate legislation.

**Persons Testifying:** PRO: Senator Ericksen, prime sponsor; Jeremy Smithson, South Sound Solar; Lori Christian, Whidbey Sun and Wind; Kelly Samson, Itek; John Rothlin, Avista; Dave Warren, WA PUD Assn.

CON: Joni Bosh, NW Energy Coalition; Andy Schwartz, The Alliance for Solar Choice.

**Signed In, Unable to Testify & Submitted Written Testimony:** PRO: Nancy Atwood, Puget Sound Energy; Victoria Lincoln, Assn. of WA Cities.

**Signed In, Unable to Testify & Submitted Written Testimony:** OTHER: Bill Clarke, WA REALTORS; Ann Rendahl, Utilities and Transportation Commission; Tony Usibelli, Dept. of Commerce, Energy Office.