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**SUBSTITUTE HOUSE BILL 2346**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Technology & Economic Development (originally sponsored by Representatives Morris, Smith, Haler, Rossetti, Tarleton, Hayes, and Peterson)

AN ACT Relating to promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling; amending RCW 82.16.120, 82.16.130, 82.08.962, 82.08.963, 82.12.962, and 82.12.963; adding new sections to chapter 82.16 RCW; creating a new section; adding a new chapter to Title 70 RCW; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds and declares that stimulating local investment in distributed renewable energy generation is an important part of a state energy strategy, helping to increase energy independence from fossil fuels, promote economic development, hedge against the effects of climate change, and attain environmental benefits. The legislature intends to increase the effectiveness of the existing renewable energy investment cost recovery program by reducing the maximum incentive rate provided for each kilowatt-hour of electricity generated by a renewable energy system over the period of the program and by creating opportunities for broader participation by low-income individuals and others who may not own the premises where a renewable energy system may be installed. The legislature intends to provide an incentive sufficient to promote installation of systems through 2020, at which point the legislature expects that the state's renewable energy industry will be capable of sustained growth and vitality without the cost recovery incentive.

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

(1) This section is the tax preference performance statement for the tax preference and incentives created under RCW 82.16.130 and section 7 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference and incentives. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preference created under RCW 82.16.130 and incentive payments authorized in section 7 of this act as intended to:

(a) Induce participating utilities to make incentive payments to utility customers who invest in renewable energy systems; and

(b) By inducing utilities, nonprofit organizations, and utility customers to acquire and install renewable energy systems, retain jobs in the clean energy sector and create additional jobs.

(3) The legislature's public policy objectives are to:

(a) Increase energy independence from fossil fuels; and

(b) Promote economic development through increasing and improving investment in, development of, and use of clean energy technology in Washington; and

(c) Increase the number of jobs in and enhance the sustainability of the clean energy technology industry in Washington.

(4) It is the legislature's intent to provide the incentives in section 7 of this act and RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating solar energy systems by persons or entities receiving the incentive.

(5) As part of its 2019 tax preference reviews conducted under chapter 43.136 RCW, the joint legislative audit and review committee must review the tax preferences and incentives in section 7 of this act and RCW 82.16.130. The legislature intends for the legislative auditor to determine that the incentive has achieved its desired outcomes if the following objectives are achieved:

(a) Achievement of two hundred megawatts of solar photovoltaic capacity in Washington by 2020; and

(b) Growth of solar-related employment from 2015 levels, as evidenced by:

(i) An increased per capita rate of solar energy-related jobs in Washington, which may be determined by consulting a relevant trade association in the state; or

(ii) Achievement of an improved national ranking for solar energy‑related employment and per capita solar energy-related employment, as reported in a nationally recognized report.

(6) In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to data collected by the Washington State University extension energy program and may obtain employment data from the employment security department.

(7) The Washington State University extension energy program shall collect, through the application process, data from persons claiming the tax credit under RCW 82.16.130 and persons receiving the incentive payments created in section 7 of this act, as necessary, and may collect data from other interested persons as necessary to report on the performance of this act.

(8) All recipients of tax credits or incentive payments awarded under this chapter must provide necessary data requested by the Washington State University extension energy program or the joint legislative audit and review committee. Failure to comply may result in the loss of a tax credit award or incentive payment in the following year.

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

(1)(a) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, and ending June 30, 2016, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system.

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

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

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

(b) No person may submit a certification to the department under (a) of this subsection after June 30, 2016.

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

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

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

(ii) The applicant's tax registration number;

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

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

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

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

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

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

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

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

((~~(b)~~)) (d) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure ((~~under RCW 82.32.330(3)(l)~~)).

(3)(a) By August 1st of each year through August 1, 2016, the application for the incentive must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

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

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

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

(ii) The applicant's tax registration number;

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

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

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure ((~~under RCW 82.32.330(3)(l)~~)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((~~(8)~~)) (7) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

((~~(9)~~)) (8) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, ((~~2020~~)) 2016.

(9) Beginning July 1, 2016, program management, technical review, and tracking responsibilities of the department under this section are transferred to the Washington State University extension energy program. At the earliest date practicable and no later than June 30, 2016, the department must transfer all records necessary for the administration of the remaining incentive payments due under this section to the Washington State University extension energy program.

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

(1) The legislature intends to allow existing participants in the investment cost recovery program to continue to receive payments for electricity produced through June 2020 at the rates they anticipated when they first received notice of eligibility to participate in the program.

(2) Any person or community solar project administrator that received notice under RCW 82.16.120(2)(d) from the department of eligibility to receive incentive payments for the electricity produced by a renewable energy system or community solar project may continue through June 30, 2020, to receive annual payments at the applicable rates provided under RCW 82.16.120 (4) or (5) for each kilowatt-hour of electricity produced by a certified renewable energy system.

(3) A person or administrator of a community solar project must apply to the Washington State University extension energy program by July 1, 2016, to receive a certification authorizing the utility serving the situs of the renewable energy system to remit an investment cost recovery incentive for each kilowatt-hour generated by a certified renewable energy system for each fiscal year, beginning July 1, 2016, and ending June 30, 2020. The Washington State University extension energy program must review the data provided by the department under RCW 82.16.120(9) and establish an application process by which to collect any additional information that it requires.

(4) A community solar project that has submitted certification to the department under RCW 82.16.120(2)(b) but that has not yet begun to produce electricity as of the effective date of this section may apply to the Washington State University extension energy program for certification under section 7 of this act, notwithstanding prior certification under RCW 82.16.120.

(5) The Washington State University extension energy program may assess a reasonable fee to cover the costs of issuing certifications under this section. Such fee should not exceed the costs incurred by the department in administering the program created in RCW 82.16.120.

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

(1) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to ((~~investment cost recovery~~)) incentive payments made in any fiscal year under RCW 82.16.120 and section 7 of this act.

(2) The credits ((~~shall~~)) must be taken in a form and manner as required by the department. The credit under this section for the fiscal year may not exceed ((~~one-half~~)) two percent of the businesses' taxable power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or ((~~one~~)) two hundred fifty thousand dollars, whichever is greater. Incentive payments to participants in a ((~~utility-owned~~)) community solar project ((~~as defined in RCW 82.16.110(2)(a)(ii)~~)) may only account for up to twenty-five percent of the total allowable credit. Incentive payments ((~~to participants in a company-owned community solar project as defined in RCW 82.16.110(2)(a)(iii) may only account for up to five percent of the total~~)) for electricity produced by commercial systems may only account for up to twenty-five percent of the allowable credit.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

((~~(2)~~)) (4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments shall be immediately due and payable. The department may deduct amounts due from future incentive payments.

(a) Except as provided in (b) of this subsection, the department ((~~shall~~)) must assess interest but not penalties on the taxes against which the credit was claimed. Interest ((~~shall~~)) must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and ((~~shall~~)) accrues until the taxes against which the credit was claimed are repaid.

((~~(3)~~)) (b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under section 7(19) of this act, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits under this section expires June 30, ((~~2020~~)) 2030. Credits may not be claimed after June 30, ((~~2021~~)) 2031.

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

The definitions in this section apply throughout this section and sections 7 and 8 of this act unless the context clearly requires otherwise.

(1) "Certification" means the authorization issued by the Washington State University extension energy program establishing a person's eligibility to receive annual incentive payments from the person's utility for a term of ten years.

(2) "Commercial-scale system" means a renewable energy system or systems other than a community solar project with a combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in section 7 of this act.

(3) "Community solar project" means a solar energy system that has a direct current nameplate generating capacity that is no larger than five hundred kilowatts and meets the applicable eligibility requirements established in sections 7 and 8 of this act.

(4) "Community solar program" means a program organized and administered by a utility or a nonprofit organization to develop community solar projects pursuant to section 8 of this act.

(5) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(6) "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner is not a utility and such owner either owns the premises where the renewable energy system is installed or occupies the premises.

(7) "Nonprofit organization" means an entity or organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

(8) "Person" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity.

(9) "Renewable energy system" means a solar energy system, including a community solar project, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(10) "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts or less that meets the applicable system eligibility requirements established in section 7 of this act.

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

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

(1) Beginning July 1, 2016, the following persons may apply to the Washington State University extension energy program to receive a certification authorizing the utility serving the situs of a renewable energy system in the state of Washington to remit an annual production incentive for each kilowatt-hour of alternating current electricity generated by the renewable energy system:

(a) The customer-owner of a residential-scale or commercial-scale renewable energy system;

(b) The nonprofit organization or utility that administers a community solar project meeting the eligibility requirements outlined in section 8 of this act and applies for certification on behalf of each of the project participants; or

(c) The utility that owns or operates a renewable energy system other than a community solar project and passes one hundred percent of the incentive payment, through a credit to the customer account or through another mechanism, to customers participating in the utility-owned or utility-operated renewable energy system.

(2) No person is eligible to receive incentive payments provided under subsection (1)(a) of this section of more than twenty-five thousand dollars per year.

(3)(a) No new certification may be issued under this section for a renewable energy system that was certified under RCW 82.16.120 and submitted a request for or received an annual incentive payment, or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in subsection (4) of this section.

(b) No new certification may be issued under this section for an additional system, either residential-scale or commercial-scale, if a residential-scale or commercial-scale system at the same situs or at the same billing meter has already been certified under this section. Instead, an applicant may seek recertification of an expanded system, as provided in (c) of this subsection.

(c) The Washington State University extension energy program may issue a recertification for a residential-scale or commercial-scale system if a customer makes investments resulting in an expansion of the system's nameplate capacity. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system and applies to the entire system the incentive rates and program rules in effect as of the date of the recertification.

(4) A utility's participation in the incentive program provided in this section is voluntary.

(a) A utility electing to participate in the incentive program must notify the Washington State University extension energy program of such election in writing.

(b) The utility may terminate its voluntary participation in the production incentive program by providing notice in writing to the Washington State University extension energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(c) Such notice of termination of participation is effective after fifteen days, at which point the Washington State University extension energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(d) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University extension energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the program.

(e) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The Washington State University extension energy program must continue to process and issue certifications for renewable energy systems that were received by the Washington State University extension energy program before the effective date of the notice of termination.

(f) A utility that has terminated participation in the program may resume participation upon filing notice with the Washington State University extension energy program.

(5)(a) The Washington State University extension energy program may certify a renewable energy system that is connected to equipment capable of measuring the electricity production of the system and interconnecting with the utility's system in a manner that allows the utility, or the customer at the utility's option, to measure and report to the Washington State University extension energy program the total amount of electricity produced by the renewable energy system.

(b) If the utility opts to require the customer to report electricity production data to the Washington State University extension energy program or opts to provide the report by mail rather than in an electronic format, the utility must negotiate with the Washington State University extension energy program a fee-for-service arrangement that covers the program's costs of obtaining the electricity production data and incorporating it into an electronic format. This fee-for-service arrangement is also applicable to a utility's exercise of the option of requiring customer reporting or by mail reporting, described in subsection (18) of this section.

(6) The Washington State University extension energy program may authorize annual incentive payments up to the following annual dollar limits:

(a) For community solar projects, five thousand dollars per project participant;

(b) For residential-scale systems, five thousand dollars; and

(c) For commercial-scale systems, twenty-five thousand dollars.

(7) To obtain certification to receive the annual production incentive payments provided in this section for electricity produced by a renewable energy system, a person must submit to the Washington State University extension energy program an application, including:

(a) An affidavit that the applicant has not previously received a certification from the department under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system at the same meter location or is applying pursuant to the exception provided in section 4(4) of this act;

(b) System operation data including global positioning system coordinates, tilt, shading, and azimuth;

(c) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels, administering the program, tracking progress toward achieving the limits on program participation established in RCW 82.16.130, or facilitating the review of the performance of the tax preferences by the joint legislative audit and review committee, as described in section 2 of this act; and

(d)(i) Except as provided in (d)(ii) of this subsection (7), the date that the renewable energy system received its final electrical inspection from the applicable local jurisdiction, as well as a copy of the permit or, if the permit is available online, the permit number.

(ii) The Washington State University extension energy program may waive the requirement in (d)(i) of this subsection (7), accepting an application and granting provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction or the Washington State University extension energy program extends the certification, for a term or terms of thirty days, due to extenuating circumstances.

(8) Incentive payments may not be authorized until the final electrical inspection and executed interconnection agreement are submitted to the Washington State University extension energy program.

(9) Within thirty days of receipt of the application for certification, the Washington State University extension energy program must notify the applicant and, except when a utility is the applicant, the utility serving the situs of the system, by mail or electronically, whether certification has been granted. The certification notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in subsection (12) of this section, subject to any applicable cap on total annual payment provided in subsection (6) of this section.

(10) Certification is valid for ten years and may not be retroactively changed except to correct later discovered errors that were made during the original application or certification process.

(11) System certification follows the system if the following conditions are met using procedures established by the Washington State University extension energy program:

(a) The renewable energy system is transferred to a new owner who notifies the Washington State University extension energy program of the transfer; and

(b) The new owner provides an executed interconnection agreement with the utility serving the premises.

(12) The Washington State University extension energy program must determine the total incentive rate for a new renewable energy system certification by adding to the base rate any applicable made-in-Washington bonus rate. A made-in-Washington bonus rate is provided for a renewable energy system or a community solar project with solar modules made in Washington or with a wind turbine or tower that is made in Washington. Both the base rates and bonus rate vary, depending on the fiscal year in which the system is certified and the type of renewable energy system being certified, as provided in the following table:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Fiscal year  of system  certification | Base rate - residential-scale | Base rate - commercial-scale | Base rate -  community  solar | Made in  Washington  bonus |
| 2017 | $0.12 | $0.07 | $0.11 | $0.05 |
| 2018 | $0.10 | $0.05 | $0.08 | $0.05 |
| 2019 | $0.08 | $0.03 | $0.06 | $0.04 |
| 2020 | $0.06 | $0.01 | $0.04 | $0.04 |

Certification of a renewable energy system entitles the recipient to receive incentive payments for electricity generated for a period of ten years from the date the system commences operation or the date the system is certified, whichever date is later. For purposes of this section, the Washington State University extension energy program must define when a renewable energy system commences operation and provide notice of such date to the recipient and the utility serving the situs of the system.

(13) The Washington State University extension energy program must cease to issue new certifications:

(a) For community solar projects in any fiscal year that twenty-five percent of available funds for credit that year under RCW 82.16.130 have been allocated to community solar projects; and

(b) For any additional renewable energy system served by a utility, if certification is likely to result in incentive payments by that utility exceeding the utility's available funds for credit under RCW 82.16.130, taking into consideration funds allocated for participants under RCW 82.16.120 and section 4 of this act.

(14) If the Washington State University extension energy program ceases issuing new certifications during a fiscal year or biennium as provided in subsection (13) of this section, in the following fiscal year or biennium, or when additional funds are available for credit such that the thresholds described in subsection (13) of this section are no longer exceeded, the Washington State University extension energy program shall resume issuing new certifications using a method of awarding certifications that results in equitable and orderly allocation of benefits to applicants.

(15) In order to begin to receive annual incentive payments, a person who has been issued a certification for the incentive as provided in subsection (9) of this section must submit the certification to the utility serving the situs of the system and must obtain an executed interconnection agreement with the utility.

(16) The Washington State University extension energy program must establish a list of equipment that is eligible for the bonus rates described in subsection (12) of this section. The Washington State University extension energy program shall, in consultation with the department of commerce, develop technical specifications and guidelines to ensure consistent and predictable determination of eligibility. A solar module is made in Washington for purposes of receiving the bonus rate only if the lamination of the module takes place in Washington. A wind turbine is made in Washington only if it is powered by a turbine or built with a tower manufactured in Washington.

(17) The manufacturer of a renewable energy system component subject to a bonus rate under subsection (12) of this section may apply to the Washington State University extension energy program to receive a determination of eligibility for such bonus rates. The Washington State University extension energy program must publish a list of components that have been certified as eligible for such bonus rates. The Washington State University extension energy program may assess an equipment certification fee to recover its costs.

(18) Annually, the utility, or the customer at the utility's option, must report to the Washington State University extension energy program, by mail or electronically, the amount of gross kilowatt-hours generated by each renewable energy system since the prior annual report.

(19)(a) The Washington State University extension energy program must calculate for the year and provide to the utility the amount of the incentive payment due to each participant and the total amount of credit against tax due available to the utility under RCW 82.16.130 that has been allocated as annual incentive payments. Upon notice to the Washington State University extension energy program, a utility may opt to directly perform this calculation and provide its results to the Washington State University extension energy program.

(b) If the Washington State University extension energy program identifies an abnormal production claim, it must notify the utility, the department of revenue, and the applicant, and must recommend withholding payment until the applicant has demonstrated that the production claim is accurate and valid. The utility is not liable to the customer for withholding payments pursuant to such recommendation unless and until the Washington State University extension energy program notifies the utility to resume incentive payments.

(20) The utility must issue the incentive payment within thirty days of receipt of the information required under subsection (19)(a) of this section from the Washington State University extension energy program. The utility must resume the incentive payments withheld under subsection (19)(b) of this section within thirty days of receiving notice from the Washington State University extension energy program that the claim has been demonstrated accurate and valid and payment should be resumed.

(21) Beginning January 1, 2017, the Washington State University extension energy program must post on its web site and update at least monthly a report, by utility, of:

(a) The number of certifications issued for renewable energy systems, including estimated system sizes, costs, and annual energy production and incentive yields for various system types; and

(b) An estimate of the amount of credit that has not yet been allocated for incentive payments under each utility's credit limit and remains available for new renewable energy system certifications.

(22) Persons receiving incentive payments under this section must keep and preserve, for a period of five years for the duration of the consumer contract, suitable records as may be necessary to determine the amount of incentive payments applied for and received. The Washington State University extension energy program may direct a utility to cease issuing incentive payments if the records are not made available for examination upon request. A utility receiving such a directive is not liable to the applicant for any incentive payments or other damages for ceasing payments pursuant to the directive.

(23) The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project, the participant, and can be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned system, a contract between the customer and the utility clearly specifies that the attributes will be retained by the utility.

(24) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online by the Washington State University extension energy program.

(25) No certification may be issued under this section after June 30, 2020.

(26) The Washington State University extension energy program must establish a one-time fee for applications under this section of seventy-five dollars per applicant, or, in the case of a community solar project, per participant, by which it must recover its costs in administering the incentive program. Within five days of the effective date of this section, the Washington State University extension energy program must notify the governor and the department of revenue if it determines that it is unable to implement the program as provided in this section within the funds provided by the seventy-five dollar fee. Upon receipt of such determination, the department of revenue must, in consultation with the department of commerce, issue a request for a proposal to identify an entity that will assume the responsibilities otherwise delegated to the Washington State University extension energy program under this section, within the funds provided by the fee.

(27) The Washington State University extension energy program may, through a public process, develop any program requirements and policies necessary for the administration of this section, RCW 82.16.120, and sections 2, 6, and 8 of this act. The department is authorized, in consultation with the Washington State University extension energy program, to adopt any rules necessary for administration of the program.

(28) Applications, certifications, requests for incentive payments under this section, and the information contained therein are not deemed tax information under RCW 82.32.330 and are subject to disclosure.

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

(1) Beginning July 1, 2016, a utility or nonprofit organization may organize and administer a community solar project as provided in this section.

(2) A community solar project must have a direct current nameplate capacity that is no more than five hundred kilowatts and must have at least ten participants, each of which is a customer of the utility providing service at the situs of the community solar project.

(3) A utility or nonprofit administrator of a community solar project must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.

(4) The utility or nonprofit administrator of a community solar project may establish a reasonable fee to cover costs incurred in organizing and administering the community solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the portion of the incentive payment that will be used for this purpose.

NEW SECTION. **Sec.**  (1) **Findings.** The legislature finds that a convenient, safe, and environmentally sound system for the recycling of solar modules, minimization of hazardous waste, and recovery of commercially valuable materials must be established. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the takeback and recycling system.

(2) **Program guidance, review, and approval.** (a) The department must develop guidance for a solar module stewardship and takeback program to guide manufacturers in preparing and implementing a self-directed program to ensure the convenient, safe, and environmentally sound takeback and recycling of solar modules and their components and materials.

(b) By January 1, 2017, the department must establish a process to develop guidance for solar module stewardship plans by working with manufacturers, stewardship organizations, and other stakeholders on the content, review, and approval of stewardship plans. The department's process must be fully implemented and stewardship plan guidance completed by January 1, 2018.

(3) **Stewardship organization as agent of manufacturer.** A stewardship organization may be designated to act as an agent on behalf of a manufacturer or manufacturers in operating and implementing the stewardship program required under this chapter. Any stewardship organization that has obtained such designation must provide to the department a list of the manufacturers and brand names that the stewardship organization represents within sixty days of its designation by a manufacturer as its agent, or within sixty days of removal of such designation.

(4) **Stewardship plans.** Each manufacturer must prepare and submit a stewardship plan to the department by the later of January 1, 2019, or within thirty days of its first sale of a solar module in or into the state.

(a) A stewardship plan must, at a minimum:

(i) Include an adequate funding mechanism to finance the costs of collection, management, and recycling of solar modules and residuals sold in or into the state by the manufacturer with a mechanism that ensures that solar modules can be delivered to takeback locations without cost to the last owner or holder;

(ii) Accept all solar modules sold in or into the state after July 1, 2016;

(iii) Describe how the program will minimize the release of hazardous substances into the environment and maximize the recovery of other components, including rare earth elements and commercially valuable materials;

(iv) Provide for takeback of solar modules at locations that are within the region of the state in which the solar modules were used and are as convenient as reasonably practicable, and if no such location within the region of the state exists, include an explanation for the lack of such location;

(v) Identify how relevant stakeholders, including consumers, installers, building demolition firms, and recycling and treatment facilities, will receive information required in order for them to properly dismantle, transport, and treat the end-of-life solar modules in a manner consistent with the objectives described in (a)(iii) of this subsection;

(vi) Establish performance goals, including a goal for the rate of combined reuse and recycling of collected solar modules as a percentage of the total weight of solar modules collected, which rate must be no less than eighty-five percent.

(b) A manufacturer must implement the stewardship plan.

(c) A manufacturer may periodically amend its stewardship plan. The department must approve the amendment if it meets the requirements for plan approval outlined in the department's guidance. When submitting proposed amendments, the manufacturer must include an explanation of why such amendments are necessary.

(5) **Plan approval**. The department shall approve a stewardship plan if it determines the plan addresses each element outlined in the department's guidance.

(6) **Annual report**. (a) Beginning April 1, 2021, and by April 1st in each subsequent year, a manufacturer, or its designated stewardship organization, must provide to the department a report for the previous calendar year that documents implementation of the plan and assesses achievement of the metrics established in subsection (4)(a)(vi) of this section.

(b) The report may include any recommendations to the department or the legislature on modifications to the program that would enhance the effectiveness of the program, including management of program costs and mitigation of environmental impacts of solar modules.

(c) The manufacturer or stewardship organization must post this report on a publicly accessible web site.

(7) **Enforcement.** Beginning January 1, 2020, no manufacturer may sell or offer for sale a solar module in or into the state unless the manufacturer has submitted to the department a stewardship plan and received plan approval. The department shall send a written warning to a manufacturer that is not participating in a plan. The written warning must inform the manufacturer that it must submit a plan or participate in a plan within thirty days of the notice. The department may assess a penalty of up to ten thousand dollars for each sale of a solar module in or into the state that occurs after the initial written warning. A manufacturer may appeal a penalty issued under this section to the superior court of Thurston county within one hundred eighty days of receipt of the notice.

(8) **Fee**. The department may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process described in subsection (2)(a) of this section. Annual implementation costs for the program may be recovered by charging every manufacturer an annual fee calculated by dividing department administrative costs by the manufacturer's pro rata share of the Washington state solar module sales in the most recent preceding calendar year, based on best available information. The sole purpose of assessing the fees authorized in this subsection is to predictably and adequately fund the department's costs of administering the solar module recycling program.

(9) **Account.** The solar module recycling account is created in the custody of the state treasurer. All fees collected from manufacturers under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

(10) **Rule making.** The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(11) **Stakeholder recommendations on orphan modules.** By December 10, 2016, the house committee with jurisdiction on energy issues must convene and complete a stakeholder process to develop recommendations about how to equitably ensure financing and takeback and recycling of: (a) Solar modules sold in or into the state prior to July 1, 2016; and (b) solar modules of any manufacturer that is no longer solvent or doing business when the stewardship obligations created in this section go into effect.

(12) **Definitions.** For purposes of this section the following definitions apply:

(a) "Department" means the department of ecology.

(b) "Manufacturer" means any person in business or no longer in business but having a successor in interest who, irrespective of the selling technique used, including by means of distance or remote sale:

(i) Manufactures or has manufactured a solar module under its own brand names for sale in or into this state;

(ii) Assembles or has assembled a solar module that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(iii) Resells or has resold in or into this state under its own brand names a solar module produced by other suppliers, including retail establishments that sell solar modules under their own brand names;

(iv) Manufactures or has manufactured a cobranded solar module product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(v) Imports or has imported a solar module into the United States that is sold in or into this state. However, if the imported solar module is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer;

(vi) Sells at retail a solar module acquired from an importer that is the manufacturer and elects to register as the manufacturer for those products; or

(vii) Elects to assume the responsibility and register in lieu of a manufacturer as defined under (b)(i) through (vi) of this subsection.

(c) "Rare earth element" means lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, yttrium, or scandium.

(d) "Reuse" means any operation by which a solar module or a component of a solar module changes ownership and is used for the same purpose for which it was originally purchased.

(e) "Solar module" means the smallest nondivisible, environmentally protected, essentially planar assembly of solar cells, or other solar collector technology and ancillary parts intended to generate direct current power under sunlight, including but not limited to interconnections, terminals, and protective devices such as diodes.

(f) "Stewardship plan" means the plan developed by a manufacturer or its designated stewardship organization for a self-directed stewardship program.

(g) "Stewardship program" means the activities conducted by a manufacturer or a stewardship organization to fulfill the requirements of this chapter and implement the activities described in its stewardship plan.

(h) "Stewardship organization" means an organization designated by a manufacturer or manufacturers to act as an agent on behalf of the manufacturer or manufacturers in operating and implementing a stewardship program.

**Sec.**  RCW 82.08.962 and 2013 2nd sp.s. c 13 s 1502 are each amended to read as follows:

(1)(a) Except as provided in RCW 82.08.963, purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "Landfill gas" means biomass fuel, of the type qualified for federal tax credits under Title 26 U.S.C. Sec. 29 of the federal internal revenue code, collected from a "landfill" as defined under RCW 70.95.030.

(d)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(5) The exemption provided by this section expires June 30, 2016, as it applies to: (a) Machinery and equipment that is used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity; or (b) sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(6) This section expires January 1, 2020.

**Sec.**  RCW 82.08.963 and 2013 2nd sp.s. c 13 s 1602 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment used directly in generating electricity or producing thermal heat using solar energy, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed by a buyer under this section.

(2) For purposes of this section and RCW 82.12.963:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity or production and use of thermal heat using solar energy;

(b) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(c) Machinery and equipment is "used directly" in generating electricity with solar energy if it provides any part of the process that captures the energy of the sun, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems; and

(d) Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that (i) meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or (ii) is determined by the Washington State University extension whether a solar collector or solar hot water system is an equivalent collector or system.

(3) The exemption provided by this section for the sales of machinery and equipment that is used directly in the generation of electricity using solar energy, or for sales of or charges made for labor or services rendered in respect to installing such machinery and equipment, expires June 30, 2016.

(4) This section expires June 30, 2018.

**Sec.**  RCW 82.12.962 and 2013 2nd sp.s. c 13 s 1505 are each amended to read as follows:

(1)(a) Except as provided in RCW 82.12.963, consumers who have paid the tax imposed by RCW 82.12.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the provisions of this chapter do not apply in respect to the use of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The consumer is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2)(a) A person claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(3) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(4) The definitions in RCW 82.08.962 apply to this section.

(5) The exemption provided in subsection (1) of this section does not apply:

(a) To machinery and equipment used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after June 30, 2016; and

(b) To any other machinery and equipment described in subsection (1)(a) of this section, or to sales of or charges made for labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after December 31, 2019.

(6) This section expires January 1, 2020.

**Sec.**  RCW 82.12.963 and 2013 2nd sp.s. c 13 s 1603 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to machinery and equipment used directly in generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.963 apply to this section.

(3) The exemption provided by this section does not apply:

(a) To the use of machinery and equipment used directly in the generation of electricity using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after June 30, 2016; and

(b) To the use of any machinery or equipment used directly in producing thermal heat using solar energy, or to the use of labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after June 30, 2018.

(4) This section expires June 30, 2018.

NEW SECTION. **Sec.**  Section 9 of this act constitutes a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**