S-3454.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6188**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**By** Senators McCoy, Keiser, Rolfes, Chase, Ranker, and Frockt

AN ACT Relating to distributed generation; 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; adding a new section to chapter 70.95N RCW; and creating a new sections.

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

NEW SECTION. **Sec.**  (1) The legislature finds that distributed generation, including renewable energy systems interconnected to the grid on utility customers' premises, is an important part of a state energy strategy to increase energy independence, promote economic development, and attain environmental benefits in the form of reduced air pollutant emissions. 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 while broadening the opportunity to access the incentives 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 solar industry will be capable of sustained growth and vitality without the cost recovery incentive.

**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, 2020, 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 for the first time the application for the incentive allowed under subsection (4) of this section 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 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 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 under this section exceed the amount of funds available for credit to the participating light and power business, the light and power business must reduce 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) 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) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, 2020.

(10) 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, 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.

**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 5 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~~)) one percent of the businesses' taxable power sales 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 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 or, for payments made after July 1, 2016, that exceed the amount reported to the utility as payable by the Washington State University extension energy program as provided under section 5(17) of this act, the amount of tax against which credit was claimed for the excess payments ((~~shall be~~)) is immediately due and payable. 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)~~)) (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 section 5 of this act unless the context clearly requires otherwise.

(1) "Certification" means the authorization issued by the Washington State University 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 with nameplate capacity greater than ten kilowatts.

(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 eligibility requirements in section 6 of this act.

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

(5) "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 on which the renewable energy system is installed, possesses a leasehold interest in tribal land on which the renewable energy system is installed, or occupies the premises on which the renewable energy system is installed.

(6) "Person" means any person or legal entity.

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

(8) "Residential-scale system" means a renewable energy system with nameplate capacity of ten kilowatts or less.

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

(10) "Washington State University energy program" means 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) Beginning July 1, 2016, the following 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 utility, in the case of a utility-owned renewable energy system; or

(c) The nonprofit organization or utility that administers a community solar project that meets the eligibility requirements outlined in section 7 of this act, which must apply on behalf of each of the project participants.

(2) No certification may be issued under this section for:

(a) A renewable energy system that was certified under RCW 82.16.120; or

(b) A renewable energy system served by a utility who has elected not to participate in the incentive program, as provided in subsection (3) of this section.

(3) A utility's participation in the incentive program provided in this section is voluntary. A utility electing to participate in the incentive program shall notify the Washington State University energy program of such election in writing by December 1st preceding the calendar year in which the utility will participate.

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

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

(b) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University energy program must report on its web site that renewable energy systems that would be served by that utility are no longer eligible to receive new certification for a renewable energy system.

(c) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments to systems that have already been certified.

(d) The Washington State University energy program must continue to process and issue certifications for renewable energy systems that were received by the Washington State University energy program before the effective date of the notice of termination.

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

(5) The Washington State University energy program may only certify a renewable energy system that meets the following eligibility criteria:

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

(b) If the renewable energy system is a solar energy system, the manufacturer, as the term is defined in section 8 of this act, is registered as a participant in the solar module recycling program described in section 8 of this act.

(6) No renewable energy system is eligible for certification to receive annual incentive payments provided under this section for more than the following amounts:

(a) Five thousand dollars for a system with under ten kilowatts nameplate capacity;

(b) Five thousand dollars per community solar project participant;

(c) Five hundred dollars per kilowatt or twenty-five thousand dollars, whichever is less, for any system other than a community solar project that is ten kilowatts or larger.

(7) No person may be a participant in more than one community solar project per meter for which the person is a meter holder.

(8)(a) 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 energy program an application, which must include, but is not limited to, the following:

(i) An affidavit that the applicant has not previously received a certification from the department under RCW 82.16.120 entitling any person to receive annual incentive payments for electricity generated by the renewable energy system;

(ii) A statement of the amount of annual electricity production expected from the renewable energy system and an estimate of the annual electrical demand of the premises;

(iii) Except as provided in (b) of this subsection, 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; and

(iv) Any other information the Washington State University 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 7 of this act.

(b) The Washington State University energy program may waive the requirement in (a)(iii) of this subsection, accepting an application and granting certification prior to proof of completed construction of a renewable energy system. A certification issued pursuant to the authority of this subsection (8)(b) will expire one hundred eighty days after the certification's issuance, unless prior to that time the applicant submits proof of the final electrical inspection from the applicable local jurisdiction.

(9) Within thirty days of receipt of the application for certification, the Washington State University energy program must notify the applicant and the utility serving the situs of the system, by mail or electronically, of 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 (11) 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 it may be adjusted in response to later discovered errors in the original application or certification. Certification of a renewable energy system follows the system with the transfer of property if the owner of the renewable energy system notifies the Washington State University energy program of the transfer and the customer-owner provides an interconnection agreement signed by the new customer-owner and the utility serving the premises.

(11) The Washington State University energy program must determine the total incentive rate for a new renewable energy system certification by adding to the base rate any applicable bonus rates.

(a) For new systems certified between July 1, 2016, and December 31, 2016, the base incentive rate available under this section, payable for a period of ten years from the date that a system commences operation, per kilowatt-hour generated by the renewable energy system, is sixteen cents per kilowatt-hour for a residential-scale renewable energy system or community solar project and ten cents per kilowatt-hour for a commercial-scale renewable energy system.

(b) In 2017, a bonus rate shall be available that is twelve cents per kilowatt-hour for electricity generated by a renewable energy system with solar modules made in Washington or with a wind turbine or tower that is made in Washington.

(c) For new system certifications beginning in calendar year 2017, the base rates and the bonus rates for made in Washington systems and smart inverters must decline as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Calendar year of system certification | Base rate - residential and community solar projects | Base rate - commercial | Made in Washington bonus |
| 2017 | $0.150 | $0.100 | $0.120 |
| 2018 | $0.135 | $0.085 | $0.105 |
| 2019 | $0.110 | $0.070 | $0.090 |
| 2020 | $0.085 | $0.055 | $0.075 |
| 2021 | $0.060 | $0.040 | $0.060 |

(d) For purposes of this section, the Washington State University energy program must define when a renewable energy system commences operation.

(12) The Washington State University 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 this section 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.

(13) If the Washington State University energy program ceases issuing new certifications during a fiscal year or biennium as provided in subsection (12) 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 (12) of this section are no longer exceeded, the Washington State University energy program shall resume issuing new certifications using a method of awarding certifications that results in equitable and orderly allocation of benefits to applicants.

(14) 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.

(15) The Washington State University energy program must establish a list of equipment that is eligible for the bonus rates described in subsection (11) of this section. The Washington State University 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.

(16) The manufacturer of a renewable energy system component subject to a bonus rate under subsection (11) of this section may apply to the Washington State University energy program to receive a determination of eligibility for such bonus rates. The Washington State University energy program must publish a list of components that have been certified as eligible for such bonus rates. The Washington State University energy program may assess an equipment certification fee to recover its costs.

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

(18)(a) The Washington State University 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 energy program, a utility may opt to directly perform this calculation and provide its results to the Washington State University energy program.

(b) No person is eligible for incentive payments under this section for electricity generated in excess of the estimated kilowatt-hours to be consumed annually at the metered location, except in the case of a community solar project.

(c) If the Washington State University energy program identifies an abnormal production claim, it must notify the utility and the applicant and recommend withholding payment until the applicant has demonstrated that the production claim is accurate and valid.

(19) Within sixty days of receipt of the information required under subsection (18)(a) of this section from the Washington State University energy program, the utility must issue the incentive payment.

(20) The Washington State University energy program must post on its web site and update quarterly a report, by utility, of:

(a) The certification limits for various system types and sizes established under subsection (12) of this section; 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.

(21) Persons receiving incentive payments under this section must keep and preserve suitable records as may be necessary to determine the amount of incentive payments applied for and received. The Washington State University 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 recipient for any incentive payments or other damages for ceasing payments pursuant to the directive.

(22) The nonpower attributes of the renewable energy system belong to the customer who hosts the system or, in the case of a community solar project, the participant, unless, in the case of a utility-owned system, the contract clearly specifies that the attributes will be retained by the utility.

(23) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online.

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

(25) The Washington State University energy program may establish fees to recover all or a portion of its costs in administering the incentive program.

(26) The Washington State University 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 section 6 of this act. The department of revenue is authorized, in consultation with the Washington State University energy program, to adopt any rules necessary for administration of the program.

(27) 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 is eligible to organize and administer a community solar project as provided in this section.

(2) The purpose of the community solar project is to facilitate broad community investment and access to solar power by utility customers who might otherwise not be able to directly invest in or access the benefits of solar power.

(a) A utility or nonprofit organization participating in a community solar project is encouraged to consult with low-income housing providers to identify projects reasonably expected to contribute to broader community participation in the benefits conferred by this tax preference.

(b) In consultation with the Washington State University extension energy program, each utility organizing and administering a community solar project must establish and publish procedures to ensure that the electric utility's program is consistent with the purpose of this section.

(c) Each utility or nonprofit organization administering a community solar project must do so in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.

(3) A community solar project must have:

(a) A direct current nameplate capacity that is no more than five hundred kilowatts; and

(b) At least ten participants, each of which is a customer of the utility providing service at the situs of the community solar project.

(4) If the community solar project is organized and administered by a nonprofit organization, the nonprofit organization must submit a project proposal, including a business plan, to the Washington State University extension energy program.

(a) Before January 1, 2017, the Washington State University extension energy program must publish guidelines that the Washington State University extension energy program will use in determining eligibility of projects submitted under this subsection (4).

(b) In determining whether a project submitted under this subsection by a nonprofit organization is eligible to receive the incentive provided in section 5 of this act, the Washington State University extension energy program must consider the extent to which the project will expand access in the solar marketplace to a greater range of participants, increase the cost‑effectiveness of the state investment, afford a benefit to low‑income individuals, and achieve any other objectives consistent with the purposes of this chapter.

(5) The utility or nonprofit organization administering 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.

(6) A utility may use a portion of the total incentive payment provided under this section for a community solar project, up to two cents per kilowatt-hour, to subsidize programs that broaden access to solar power or ownership of solar energy systems by low‑income customers, if so authorized through a public process by the commission or governing body.

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 5 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 and incentive created in section 5 of this act as intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a), and to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

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

(a) To increase and improve utilization of clean energy technology in Washington; and

(b) To 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 5 of this act and RCW 82.16.130 in order to reduce the costs associated with installing and operating clean energy systems by persons or entities receiving the incentive and to reduce the costs for providing those incentives by entities receiving a credit under RCW 82.16.130, thereby increasing the ability for clean energy technology firms to access the energy market and expand their operations in Washington and increasing the number of jobs in the clean energy technology industry in Washington.

(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 5 of this act and RCW 82.16.130. The legislature intends for the legislative auditor to determine that the incentive has achieved its desired outcome and no extension of the tax preference is necessary if the following performance milestones are met:

(a) Installation of one hundred sixty-five megawatts of solar photovoltaic capacity in Washington by 2020;

(b) A five-fold increase in residential wind power and three-fold increase in commercial distributed and community wind power, as compared to 2014 levels;

(c) Growth of solar-related employment, as evidenced by an increase in the total number and per capita rate of solar energy-related jobs in Washington, as reported by a relevant trade association in the state and 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;

(d) Creation of a system for capturing data about installed solar systems that can be transferred to utilities, so that utilities can see solar systems as a fleet and manage them with other generation resources; and

(e) Creation and propagation of tools for utilities that give them greater situational viewability of what customers' capital investments are being made behind the electricity meter and better understanding of how such investments might fit together efficiently into a ten-year distributed energy resource plan.

(6) The legislative auditor must include in its 2019 report to the legislature an overview of market conditions for solar energy system installation in the state and an analysis of how expiration of the tax preference provided in section 5 of this act and RCW 82.16.130 may affect the continued development of a sustainable solar industry in Washington. The legislative auditor should consider the levelized cost of solar energy systems installed in 2019, the payback period for such systems for a person or entity installing the system, with or without the solar production incentive, and the average contribution of the state of Washington to the total levelized cost of a solar energy system for a person benefiting from the tax preference, as compared to the average contribution of other states with comparable insolation levels that provide solar production tax incentives.

(7) In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to the data collected by the Washington State University extension energy program and the department under the application and certification process established in section 5 of this act, and may obtain employment data from the employment security department.

(8) The Washington State University extension energy program is encouraged to collect, through the application process, data from persons receiving the incentive payments created in section 5 of this act, as necessary, and may collect data from other interested persons to report on progress toward achieving the performance milestones listed in subsection (5) of this section.

(9) All recipients of tax credits or incentive payments awarded under this chapter must provide any 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.

NEW SECTION. **Sec.**  A new section is added to chapter 70.95N RCW to read as follows:

(1) The legislature finds that a convenient, safe, and environmentally sound system for the decommissioning and recycling of solar modules must be established. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the decommissioning and recycling system.

(2) The department must provide guidance for solar module manufacturers on an effective, self-directed solar module collection and recycling program.

(3)(a) The department must review and approve or disapprove any solar module collection and recycling program plans submitted by a manufacturer. The department must approve a manufacturer's plan if it determines that the plan:

(i) Is reasonably calculated to maximize collection rates and minimize disposal of solar modules or components of solar modules as waste;

(ii) Is reasonably designed to maximize the amount of material responsibly recycled given the current market circumstances; and

(iii) Includes a mechanism for financing the collection, transportation, and recycling of solar modules.

(b) The department may consult with the Washington State University extension energy program concerning solar market conditions and any other information considered necessary to determine if a solar module collection and recycling program is cost-effective and protective of the environment.

(4) Beginning January 1, 2019, in order for a solar energy system to be eligible for incentive payments under section 6 of this act, a manufacturer of the solar module must have a plan filed with the department consistent with the purposes of this section, and must have implemented any financial mechanism identified by the plan as provided in subsection (3)(a)(iii) of this section.

(5) By February 1, 2017, the department must establish and implement a process to provide guidance described in subsection (2) of this section and plan review and approval described in subsections (3) and (4) of this section and consult with manufacturers that may file a plan prior to the establishment of the plan review and approval process. Upon adoption by the department of a plan review and approval process, the department must expedite review and approval of any previously filed plans.

(6) The department may collect a fee from participating manufacturers for the plan review and approval process. The fee is to be charged based on the following formula: Department administrative costs divided by the manufacturer's pro rata share of the Washington state solar module sales in the most recent preceding calendar year, based on the best available information or estimate from the Washington State University extension energy program.

(7) For purposes of this section, "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:

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

(b) 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;

(c) 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;

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

(e) 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;

(f) Sells at retail a solar module acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products; or

(g) Elects to assume the responsibility and register in lieu of a manufacturer as defined under this section.

**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 June 30, 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.

**--- END ---**