
HOUSE BILL 1105

State of Washington 63rd Legislature 2013 Regular Session

By Representatives McCoy, Morris, Wylie, Ryu, and Pollet

Read first time 01/16/13. Referred to Committee on Environment.

1 AN ACT Relating to modifying the renewable energy cost recovery
2 program; amending RCW 82.16.110, 82.16.120, and 82.16.130; and adding
3 new sections to chapter 82.16 RCW.

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

5 **Sec. 1.** RCW 82.16.110 and 2011 c 179 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Administrator" means an owner and assignee of a community
10 solar project as defined in subsection (2)(a)(i) of this section that
11 is responsible for applying for the investment cost recovery incentive
12 on behalf of the other owners and performing such administrative tasks
13 on behalf of the other owners as may be necessary, such as receiving
14 investment cost recovery incentive payments, and allocating and paying
15 appropriate amounts of such payments to the other owners.

16 (2)(a) "Community solar project" means:

17 (i) A solar energy system that is capable of generating up to
18 seventy-five kilowatts of electricity and is owned by local
19 individuals, households, nonprofit organizations, or nonutility

1 businesses that is placed on the property owned by a cooperating local
2 governmental entity or a federally recognized Indian tribal government
3 that is not in the light and power business or in the gas distribution
4 business;

5 (ii) A utility-owned solar energy system that is capable of
6 generating up to seventy-five kilowatts of electricity and that is
7 voluntarily funded by the utility's ratepayers where, in exchange for
8 their financial support, the utility gives contributors a payment or
9 credit on their utility bill for the value of the electricity produced
10 by the project; or

11 (iii) A solar energy system, placed on the property owned by a
12 cooperating local governmental entity or a federally recognized Indian
13 tribal government that is not in the light and power business or in the
14 gas distribution business, that is capable of generating up to seventy-
15 five kilowatts of electricity, and that is owned by a company whose
16 members are each eligible for an investment cost recovery incentive for
17 the same customer-generated electricity as provided in RCW 82.16.120.

18 (b) For the purposes of "community solar project" as defined in (a)
19 of this subsection:

20 (i) "Company" means an entity that is:

21 (A)(I) A limited liability company;

22 (II) A cooperative formed under chapter 23.86 RCW; or

23 (III) A mutual corporation or association formed under chapter
24 24.06 RCW; and

25 (B) Not a "utility" as defined in this subsection (2)(b); and

26 (ii) "Nonprofit organization" means an organization exempt from
27 taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue
28 code of 1986, as amended, as of January 1, 2009; and

29 (iii) "Utility" means a light and power business, an electric
30 cooperative, or a mutual corporation that provides electricity service.

31 (3) "Customer-generated electricity" means a community solar
32 project or the alternating current electricity that is generated from
33 a renewable energy system located in Washington and installed on an
34 individual's, businesses', federally recognized Indian tribal
35 government's, or local government's real property that is also provided
36 electricity generated by a light and power business. Except for
37 community solar projects, a system located on a leasehold interest does
38 not qualify under this definition. Except for utility-owned community

1 solar projects, "customer-generated electricity" does not include
2 electricity generated by a light and power business with greater than
3 one thousand megawatt hours of annual sales or a gas distribution
4 business.

5 (4) "Economic development kilowatt-hour" means the actual kilowatt-
6 hour measurement of customer-generated electricity multiplied by the
7 appropriate economic development factor.

8 (5) "Local governmental entity" means any unit of local government
9 of this state including, but not limited to, counties, cities, towns,
10 municipal corporations, quasi-municipal corporations, special purpose
11 districts, and school districts.

12 (6) "Photovoltaic cell" means a device that converts light directly
13 into electricity without moving parts.

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

17 (8) "Solar energy system" means any device or combination of
18 devices or elements that rely upon direct sunlight as an energy source
19 for use in the generation of electricity.

20 (9) "Solar inverter" means the device used to convert direct
21 current to alternating current in a solar energy system.

22 (10) "Solar module" means the smallest nondivisible self-contained
23 physical structure housing interconnected photovoltaic cells and
24 providing a single direct current electrical output.

25 (11) "Stirling converter" means a device that produces electricity
26 by converting heat from a solar source utilizing a stirling engine.

27 **Sec. 2.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to read
28 as follows:

29 (1)(a) Until July 1, 2014, any individual, business, local
30 governmental entity, not in the light and power business or in the gas
31 distribution business, or a participant in a community solar project
32 may apply to the light and power business serving the situs of the
33 system, each fiscal year beginning on July 1, 2005, for an investment
34 cost recovery incentive for each kilowatt-hour from a customer-
35 generated electricity renewable energy system.

36 (b) In the case of a community solar project as defined in RCW

1 82.16.110(2)(a)(i), the administrator must apply for the investment
2 cost recovery incentive on behalf of each of the other owners.

3 (c) In the case of a community solar project as defined in RCW
4 82.16.110(2)(a)(iii), the company owning the community solar project
5 must apply for the investment cost recovery incentive on behalf of each
6 member of the company.

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

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

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

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

23 (ii) The applicant's tax registration number;

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

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

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

31 (C) A solar inverter manufactured in Washington state;

32 (D) A solar module manufactured in Washington state;

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

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

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

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

3 (b) Within thirty days of receipt of the certification the
4 department of revenue must notify the applicant by mail, or
5 electronically as provided in RCW 82.32.135, whether the renewable
6 energy system qualifies for an incentive under this section. The
7 department may consult with the climate and rural energy development
8 center to determine eligibility for the incentive. System
9 certifications and the information contained therein are subject to
10 disclosure under RCW 82.32.330(3)(1).

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

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

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

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

25 (ii) The applicant's tax registration number;

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

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

31 (b) Within sixty days of receipt of the incentive certification the
32 light and power business serving the situs of the system must notify
33 the applicant in writing whether the incentive payment will be
34 authorized or denied. The business may consult with the climate and
35 rural energy development center to determine eligibility for the
36 incentive payment. Incentive certifications and the information
37 contained therein are subject to disclosure under RCW 82.32.330(3)(1).

1 (c)(i) Persons, administrators of community solar projects, and
2 companies receiving incentive payments must keep and preserve, for a
3 period of five years, suitable records as may be necessary to determine
4 the amount of incentive applied for and received. Such records must be
5 open for examination at any time upon notice by the light and power
6 business that made the payment or by the department. If upon
7 examination of any records or from other information obtained by the
8 business or department it appears that an incentive has been paid in an
9 amount that exceeds the correct amount of incentive payable, the
10 business may assess against the person for the amount found to have
11 been paid in excess of the correct amount of incentive payable and must
12 add thereto interest on the amount. Interest is assessed in the manner
13 that the department assesses interest upon delinquent tax under RCW
14 82.32.050.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (9) No incentive may be paid under this section for kilowatt-hours
34 generated before July 1, 2005, or after June 30, 2014, except that any
35 entity receiving incentive payments under this section on the effective
36 date of this section may continue to receive payments until July 1,
37 2020.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.16 RCW
2 to read as follows:

3 (1) A renewable energy system cost recovery incentive program is
4 created to be administered by the department of commerce. Utility
5 participation in the program is voluntary.

6 (2)(a) Beginning July 1, 2014, the following may apply for cost
7 recovery incentives under this section: Any person, other than a
8 utility or a gas distribution business, who owns a customer-generated
9 electricity renewable energy system; or a participant in a community
10 solar project as defined in RCW 82.16.110(2)(a). A person must first
11 apply to the department of commerce for certification that a customer-
12 generated electricity renewable energy system is eligible to receive an
13 incentive. The certification application may be in a form and manner
14 prescribed by the department of commerce that includes, but is not
15 limited to, the following information:

16 (i) The name and address of the applicant and location of the
17 renewable energy system;

18 (ii) The applicant's tax registration number;

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

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

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

26 (C) A solar inverter manufactured in Washington state;

27 (D) A solar module manufactured in Washington state;

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

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

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

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

36 (b) When determining if eligible equipment is manufactured in
37 Washington state, the department of commerce must rely on the opinion
38 of the Washington State University energy extension program.

1 (c) Within thirty days of receipt of the application the department
2 of commerce must notify the applicant by mail, or electronically as
3 provided in RCW 82.32.135, whether the renewable energy system is
4 certified for an incentive under this section. System certifications
5 and the information contained therein are subject to disclosure under
6 RCW 82.32.330(3)(1).

7 (3)(a) After a customer-generated electricity renewable energy
8 system is certified by the department of commerce, an annual
9 application for the incentive under this section must be made to the
10 participating utility serving the situs of the system by a form and
11 manner prescribed by the department of commerce that includes, but is
12 not limited to, the following information:

13 (i) The name and address of the applicant and location of the
14 renewable energy system;

15 (ii) The applicant's tax registration number;

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

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

21 (b) Within sixty days of receipt of the incentive application the
22 utility serving the situs of the system must notify the applicant in
23 writing whether the application is accepted. A participating utility
24 must pay the successful applicant incentive payments as calculated
25 under subsection (4) of this section.

26 (c)(i) Persons receiving incentive payments must keep and preserve,
27 for a period of five years, suitable records as may be necessary to
28 determine the amount of incentive applied for and received. Such
29 records must be open for examination at any time upon notice by the
30 utility that made the payment or by the department of revenue. If upon
31 examination of any records or from other information obtained by the
32 utility or department it appears that an incentive has been paid in an
33 amount that exceeds the correct amount of incentive payable, the
34 utility may assess against the person for the amount found to have been
35 paid in excess of the correct amount of incentive payable and must add
36 thereto interest on the amount. Interest is assessed in the manner
37 that the department of revenue assesses interest upon delinquent tax
38 under RCW 82.32.050.

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

4 (4) Except for utility-owned community solar projects as defined in
5 RCW 82.16.110(2)(a)(ii), the incentive is fifteen cents per kilowatt-
6 hour generated unless requests exceed the amount authorized for credit
7 to the participating utility. For utility-owned community solar
8 projects, the incentive is thirty cents per kilowatt-hour generated
9 unless requests exceed the amount authorized for credit to the
10 participating utility. For the purposes of this section, the rate paid
11 for the incentive must be multiplied by the following factors:

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

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

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

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

23 (5)(a) Except as provided in (b) of this subsection (5), no person
24 is eligible for incentives provided under this section for more than
25 five thousand dollars per year.

26 (b) In the case of a utility-owned community solar project as
27 defined in RCW 82.16.110(2)(a)(ii), each ratepayer that contributes to
28 the project is eligible for an incentive in proportion to the
29 contribution, up to five thousand dollars per year.

30 (6) The Washington State University energy extension program must
31 establish guidelines for technologies that are identified as Washington
32 manufactured. The university must use the guidelines when advising the
33 department of commerce.

34 (7)(a) Except as provided in (b) of this subsection (7), the
35 environmental attributes of the renewable energy system belong to the
36 applicant, and do not transfer to the state or the utility upon receipt
37 of the incentive.

1 (b) In the case of a utility-owned community solar project as
2 defined in RCW 82.16.110(2)(a)(ii), the environmental attributes of the
3 renewable energy system belong to the utility.

4 (8) Utilities participating in the renewable energy system cost
5 recovery program must offer ten-year contracts for the payment of
6 incentives. The remainder of a contract may be transferrable to a new
7 owner of the situs of the renewable energy system.

8 (9) Utilities participating in the renewable energy system cost
9 recovery program may charge applicants an administrative fee.

10 (10) No incentive may be paid under this section for kilowatt-hours
11 generated before July 1, 2014, or after June 30, 2024, except that a
12 person receiving payments under a ten-year contract may receive
13 payments until July 1, 2031, or until the end of the contract,
14 whichever is sooner.

15 (11) The following definitions apply throughout this section unless
16 the context clearly requires otherwise.

17 (a) "Customer-generated electricity" means the alternating current
18 electricity that is generated from a renewable energy system or
19 utility-owned community solar energy system located in Washington state
20 and installed on a residence, a business, or real property owned by a
21 local government or federally recognized Indian tribal government that
22 is also provided electricity by a utility. Except for utility-owned
23 community solar projects, a system located on a leasehold interest does
24 not qualify under this definition.

25 (b) "Person" means an individual, business, federally recognized
26 Indian tribe, local government entity, or a participant in a community
27 solar project as defined in RCW 82.16.110(2)(a).

28 (c) "Utility" means a light and power business as defined in RCW
29 82.16.010.

30 **Sec. 4.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to read
31 as follows:

32 (1) A light and power business (~~shall~~) must be allowed a credit
33 against taxes due under this chapter in an amount equal to investment
34 cost recovery incentive payments made in any fiscal year under RCW
35 82.16.120. The credit (~~shall~~) must be taken in a form and manner as
36 required by the department. The credit under this section for the
37 fiscal year may not exceed one-half percent of the businesses' taxable

1 power sales due under RCW 82.16.020(1)(b) or one hundred thousand
2 dollars, whichever is greater. Incentive payments to participants in
3 a utility-owned community solar project as defined in RCW
4 82.16.110(2)(a)(ii) may only account for up to twenty-five percent of
5 the total allowable credit. Incentive payments to participants in a
6 company-owned community solar project as defined in RCW
7 82.16.110(2)(a)(iii) may only account for up to five percent of the
8 total allowable credit. The credit may not exceed the tax that would
9 otherwise be due under this chapter. Refunds (~~shall~~) may not be
10 granted in the place of credits. Expenditures not used to earn a
11 credit in one fiscal year may not be used to earn a credit in
12 subsequent years.

13 (2) For any business that has claimed credit for amounts that
14 exceed the correct amount of the incentive payable under RCW 82.16.120,
15 the amount of tax against which credit was claimed for the excess
16 payments (~~shall be~~) are immediately due and payable. The department
17 (~~shall~~) must assess interest but not penalties on the taxes against
18 which the credit was claimed. Interest (~~shall~~) must be assessed at
19 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
20 retroactively to the date the credit was claimed, and (~~shall~~) accrues
21 until the taxes against which the credit was claimed are repaid.

22 (3) The right to earn tax credits under this section expires (~~June~~
23 ~~30, 2020. Credits may not be claimed after June 30, 2021~~) July 1,
24 2014.

25 NEW SECTION. Sec. 5. A new section is added to chapter 82.16 RCW
26 to read as follows:

27 (1) Beginning July 1, 2014, a utility is allowed a credit against
28 taxes due under this chapter in an amount equal to cost recovery
29 incentive payments made in any fiscal year under section 3 of this act.
30 The credit must be taken in a form and manner as required by the
31 department of revenue. The credit under this section for the fiscal
32 year may not exceed one-half percent of the utility's taxable power
33 sales due under RCW 82.16.020(1)(b) or one hundred thousand dollars,
34 whichever is greater. Incentive payments to participants in a utility-
35 owned community solar project as defined in RCW 82.16.110(2)(a)(ii) may
36 only account for up to twenty-five percent of the total allowable
37 credit. Incentive payments to participants in a company-owned

1 community solar project as defined in RCW 82.16.110(2)(a)(iii) may only
2 account for up to five percent of the total allowable credit. The
3 credit may not exceed the tax that would otherwise be due under this
4 chapter. Refunds may not be granted in the place of credits.
5 Expenditures not used to earn a credit in one fiscal year may not be
6 used to earn a credit in subsequent years.

7 (2) For any utility that has claimed credit for amounts that exceed
8 the correct amount of the incentive payable under RCW 82.16.120, the
9 amount of tax against which credit was claimed for the excess payments
10 is immediately due and payable. The department of revenue must assess
11 interest but not penalties on the taxes against which the credit was
12 claimed. Interest must be assessed at the rate provided for delinquent
13 excise taxes under chapter 82.32 RCW, retroactively to the date the
14 credit was claimed, and accrues until the taxes against which the
15 credit was claimed are repaid.

16 (3) The right to earn tax credits under this section expires July
17 1, 2030. Credits may not be claimed after June 30, 2031.

18 (4) For the purpose of this section, "utility" means a light and
19 power business as defined in RCW 82.16.010.

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