

# SENATE BILL REPORT

## SB 5892

---

---

As Reported by Senate Committee On:  
Energy, Environment & Telecommunications, February 18, 2015

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

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

**Sponsors:** Senator Ericksen.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/17/15, 2/18/15 [DPS-WM, DNP].

---

### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5892 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; McCoy, Ranking Minority Member; Braun, Brown, Cleveland, Habib and Ranker.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

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

**Background:** Renewable Energy Cost-Recovery Incentive Program. In 2005 the Legislature created a Renewable Energy Cost-Recovery Incentive Program (Cost-Recovery Program) to promote renewable energy systems located in Washington that produce electricity from solar, wind, or anaerobic digesters. In 2009 the Legislature expanded the Cost-Recovery Program to include community solar projects that are generally owned by multiple individuals, utilities, or companies. The Cost-Recovery Program expires June 30, 2020.

Incentive Rate. The owner of an eligible system may apply for an incentive payment from the electric utility serving the applicant. The base rate for the incentive is generally \$0.15 per kilowatt-hour (kWh) of electricity produced, except that the base rate for community solar projects is set at \$0.30 per kWh produced. Extra incentives for solar or wind generating systems that use certain components manufactured in Washington can increase the incentive

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

payments to \$1.08 per kWh produced for community solar projects and \$0.54 per kWh produced for all other systems.

Incentive Payment Caps. Incentive payments are capped at \$5,000 annually per applicant. In the case of community solar projects, each member is eligible for a payment in proportion to the member's ownership share up to \$5,000. A utility providing incentive payments is allowed a credit against its public utility tax (PUT) for incentives paid, limited to \$100,000 or 0.5 percent of its taxable power sales, whichever is greater. If the amount of incentive requests exceeds the amount of funds available to the participating utility, the incentive payments must be reduced proportionally to all customers.

Incentive payments to participants in a utility-owned community solar project may only account for up to 25 percent of the total allowable credit. Incentive payments to participants in a company-owned community solar project may only account for up to 5 percent of the total allowable credit.

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

Agencies Administering the Cost-Recovery Program. The Department of Revenue (DOR), with assistance from the Washington State University (WSU) Energy Program, administers the Cost-Recovery Program.

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

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

Third-Party Leasing of Net-Metered Systems. In a 2013 order, the Utilities and Transportation Commission (UTC) determined that a customer may net meter with a leased system.

UTC Regulation of Solar Leasing Companies. In a 2014 formal policy statement, the UTC concluded companies that lease rooftop solar systems, and sell the power produced by the system to a customer, are likely subject to regulation as an electrical company. However, the UTC wrote it would not be appropriate to require the same level of economic and rate regulation of solar leasing companies as it applies to investor-owned utilities. Given the ambiguities of the current law, the UTC stated the best course of action would be for the Legislature to clarify the UTC's authority in statute to produce a greater level of certainty regarding the regulation of these companies.

Consumer Protection Act (CPA). The CPA prohibits unfair and deceptive practices in the marketplace, and may be enforced by the Attorney General of Washington or private lawsuits. Remedies include injunctive relief, fines, treble damages, and recovery of court costs and attorneys' fees.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Substitute):** I. Changing the Current Cost-Recovery Program. *Requiring Applicants to File Affidavits About the Amount of Power Generated by Their Projects*. When applying for incentive payments, an applicant must submit a signed affidavit to its utility on the amount of kWh generated by the system in the prior fiscal year. The amount of kWh may be determined, at the option of the utility, from a reading of the inverter or production meter connected to the system.

*Ending New Applications Under the Current Cost-Recovery Program on December 31, 2015*. Beginning January 1, 2016, no applicant may receive a certification for a cost-recovery incentive under the current program. However, systems certified on or prior to that date may continue to receive incentives for kWh generated through June 30, 2020.

II. Creating a New Cost-Recovery Program Similar to the Current Program But with Certain Modifications. Beginning January 1, 2016, eligible systems may receive cost-recovery incentive payments but no incentives may be paid for a system that begins operating after December 31, 2020, and no incentives may be claimed after December 31, 2030.

*Limiting the Cost-Recovery Program to Specified Solar Energy Systems*. The following types of projects are eligible to receive incentives under the program:

- **Community Solar Projects**. The following are community solar projects: (1) a nonprofit-owned solar energy system with a generating capacity up to 100 kW that is placed on local-government property; or (2) a utility-administered solar energy system with a generating capacity up to 500 kW that is voluntarily funded by ratepayers and where the utility credits contributors on their utility bill the value of the electricity produced by the project.
- **Utility-Owned Solar Projects**. A utility-owned solar energy system is one with generating capacity up to 500 kW, which is owned by a utility and installed on the premises of a retail electric residential, commercial, nonprofit organization, or local government – including institutions of higher education – customer of the utility in Washington.
- **Customer-Owned Solar Projects**. A solar energy system is customer-owned when owned by a residential utility customer, and located in Washington and installed on the customer's non-leased real property served by the utility.
- **Qualified Solar Energy Systems (Qualified Systems)**. A Qualified System is one (1) located in Washington; (2) installed on real property that is not leased and is provided electricity by an electric utility; (3) that is sized to produce electricity equal to or less than the electricity consumed on the premises; and (4) the system is owned by a solar energy services company (SESCO).

Company-owned community solar projects are not eligible to receive payments under the new cost-recovery incentive program. In addition, new net metering fees may be applied to qualified systems after December 31, 2015.

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

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

*Requiring Applicants to File Affidavits.* Applicants must provide Commerce a signed affidavit stating the premises where the eligible system is located is not receiving any other cost-recovery incentives.

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

- 2016: \$0.15;
- 2017: \$0.14;
- 2018: \$0.13;
- 2019: \$0.12; and
- 2020: \$0.11.

*Creating Incentive Multipliers.* The following multipliers are used to increase the total incentive payment:

- Washington-manufactured solar module or stirling converter: 2.4;
- Washington-manufactured smart inverter: 1.2; and
- energy storage system: 0.7.

Energy storage system means a system or technology that can store up to 25 percent of the maximum total daily output of the eligible renewable energy system.

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

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

A participant in a community solar project is eligible to receive an annual cost-recovery incentive payment up to \$5,000 per year.

In no case may incentive payments be paid for electricity generated in excess of the net kWh consumed annually at the metered location. In addition, unlike the current cost-recovery

program, there is no requirement that if the amount of incentive requests exceeds the amount of funds available to a participating utility, the incentive payments must be reduced proportionally to all customers.

*Raising the Caps on Credits for the PUT.* Beginning January 1, 2016, a utility must be allowed a credit against its PUT not to exceed \$250,000 or 1 percent of its taxable power sales, whichever is greater. The current cap is the greater of \$100,000 or 0.5 percent of taxable power sales. In addition, the payment cap for participants in a utility-owned community solar project, beginning operation after January 1, 2016, is raised from 25 percent to a maximum of 30 percent of the total allowable credit. Incentive payments claimed by a utility for utility-owned solar projects may only account for up to 45 percent of the total allowable credit. Incentive payments for systems greater than 10 kW may not claim more than 50 percent of the total allowable credit. Cost-recovery credits and incentives may not be claimed for kW generated after December 31, 2030.

III. Authorizing Utility Solar Programs and Qualified Systems. Electric utilities may offer solar energy programs, subject to approval by the UTC or appropriate governing board. A program design that uses leases or other power purchase financing models must include such things as a fair market value purchase option at the end of the contract and a reasonable process for transferring the obligation to a new owner of the underlying property.

An electric utility that offers solar energy systems to utility customers must meet a number of conditions, such as competitive bidding of systems, reasonable prices, and the use of a skilled workforce.

SESCOs may offer qualified systems to utility customers.

*Defining SESCO.* A SESCO is a private entity that owns or has a financial interest in a solar energy system on property controlled by a customer, and enters into an agreement with the customer to provide solar energy services. A SESCO is not an electric utility that offers solar energy services to their own customers, a commercial lender regulated by the Department of Financial Institutions, or an entity that sells or installs solar energy systems at retail.

*Defining Solar Energy Services.* Solar energy services means the provision of electricity generated by a solar system to a customer under a lease, power purchase agreement, loan, or other financial transaction. Services may also include such things as system monitoring and maintenance, warranty provisions, performance guarantees, and customer service.

*Limiting Assignments of Incentives.* No cost-recovery incentives paid to qualified systems may be assigned to a financial institution.

*Limiting SESCO Participation.* If an electric utility offers solar energy systems to at least its residential rate class and one additional customer class, no SESCO may generally offer a qualified system directly to that utility's customers. However, a SESCO may offer qualified systems directly to an electric utility's customers if: (1) the utility does not offer a solar energy program within one year of the effective date of this bill; or (2) the program design is not approved by the UTC or an appropriate governing board within two years of its submittal

after the effective date of this bill. An electric utility may require additional insurance or other form of indemnification for qualified systems.

**IV. Regulation of SESCOs and Net Metering.** *Limiting the Eligibility of Qualified Systems to Participate in Net Metering.* Qualified systems that collect cost-recovery incentives may net meter but the utility is allowed to charge a new net-metering fee.

*Authorizing Regulation of SESCOs.* SESCOs conducting business in the state are subject to UTC jurisdiction and must follow specified requirements, such as paying registration fees, cooperating with UTC investigations of customer complaints, and including various disclosures in consumer contracts. In addition, actions of SESCOs may also be subject to the CPA.

*Transferring Ownership of a Qualifying System.* Unless the seller and buyer agree otherwise, a buyer of real property subject to a lease of a qualified solar energy system must assume the remainder of the lease if details of the lease are recorded with the county auditor. Various requirements are specified for notifying utilities and SESCOs of a sale of real property. Requirements for removal of a qualified system are also specified.

*Authorizing a Net-Metering Fee.* Starting January 1, 2016, a utility may: (1) charge net-metered customers a monthly or volumetric fee to recover costs caused by the net-metered system; or (2) credit the customer the value of the solar power, as determined by the UTC or the appropriate governing body.

*Intent and Findings.* The Legislature finds, among other things, that solar energy systems and leased energy systems encourage energy independence by customers, that the benefits of energy independence do not justify overlapping incentives, and that net metering leads to cost shifts to nonparticipating ratepayers.

**Appropriation:** None.

**Fiscal Note:** Requested on February 8, 2015. New fiscal note requested on February 16, 2015.

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

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

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

**Staff Summary of Public Testimony:** PRO: This bill creates a pathway for keeping the current renewable subsidy while minimizing the cost to taxpayers and ratepayers. The bill begins to lower subsidy rates because the cost of solar equipment is declining. The bill is a work in progress and is part of a unique collaboration of stakeholders. The incentive works; for example, Itek employs 100 people and that number will double by April 2015, and their base salaries have increased as well. Owners of solar systems should not be able to shift their costs to other ratepayers. The CPA provisions and Washington-manufactured multipliers should stay in the bill. The bill concept is supported. Utilities should be allowed to enjoy the incentive, the ease of administrating the program is appreciated, and the declining glide path

is supported. The net metering cap should be increased in conjunction with the declining incentives. The benefits of solar should be assessed.

CON: The utility right of first refusal should be removed because consumers deserve options in a competitive marketplace. Solar companies are already subject to consumer protection provisions in federal and state law. All providers of solar services should be treated equally. Wind and anaerobic digesters should also be eligible to receive incentives.

OTHER: It is premature to consider a value of solar tariff. It should not be automatically assumed that solar systems shift costs to other ratepayers. You should be able to net meter and use the cost recovery incentive. The utility right of first refusal is opposed. Utilities should not be able to prevent SESCOs from operating. SESCOs should be classified as electrical companies. Utilities should not impose additional safety and performance requirements on SESCOs. Current law is adequate to prevent cost shifts due to net metering. Additional net metering provisions are overly prescriptive.

**Persons Testifying:** PRO: Jeremy Smithson, Solar Installers of WA; Daryl Daus, Habitat for Humanity of Kitsap County; Dave Warren, WA PUD Assn.; Andrew Cochrane, Power Trip Energy Corp, President; John Rothlin, Avista; Nancy Atwood, Puget Sound Energy; Jim Justin, Itek.

CON: Britton Rife, WA Local Energy Alliance, Distributed Wind Energy Assn.; Jeff Gombosky, The Alliance for Solar Choice.

OTHER: Lauren McCloy, UTC; Tony Usibelli, WA Dept. of Commerce; Kelly Hall, Renewable NW; Joni Bosh, NW Energy Coalition.