

# SENATE BILL REPORT

## SB 5499

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As of April 7, 2017

**Title:** An act relating to promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling.

**Brief Description:** Promoting a sustainable, local renewable energy industry through modifying renewable energy system tax incentives and providing guidance for renewable energy system component recycling.

**Sponsors:** Senator Palumbo.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 4/06/17.

**Brief Summary of Bill**

- Closes the Renewable Energy Cost-Recovery Incentive Program to new customer participants after June 30, 2017.
- Creates a new production incentive program for renewable energy systems, beginning July 1, 2017, and ending June 30, 2021, with declining incentive rates depending on the fiscal year of certification and system type. Certification is for a term of eight years.
- Extends the public utility tax credit to incentive payments made under the new production incentive program until June 30, 2029.
- Requires the Department of Ecology to establish a process to develop guidance for solar module stewardship plans by January 1, 2018.
- Expires certain sales and use tax exemptions for machinery and equipment using solar energy to generate electricity or produce thermal heat on June 30, 2017.

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**SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS**

**Staff:** Kimberly Cushing (786-7421)

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

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

Incentive Rate. The owner of an eligible system may apply for an incentive payment from the electric utility serving the applicant. The base rate for the incentive is generally \$0.15 per kilowatt-hour (kWh) of electricity produced, except that the base rate for community solar projects is set at \$0.30 per kWh produced. Extra incentives for solar or wind generating systems that use certain components manufactured in Washington can increase the incentive payments to \$1.08 per kWh produced for community solar projects and \$0.54 per kWh produced for all other systems.

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

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.

Electronic Products Recycling. Since 2009, the Department of Ecology (Ecology) has overseen E-Cycle, which provides for the recycling of electronic waste at no direct cost to consumers. Covered products include televisions, monitors, computers, laptops, and tablets. Manufacturers fund operations through payments based in part on each manufacturer's in-state market share.

Sales Tax Incentives for Solar Equipment. A sales and use tax exemption for solar energy systems that produce 10 kilowatts of power (kW) or less, or use thermal heat to produce not more than 3 million British thermal units (BTUs) per day, and associated installation charges, expires June 30, 2018. A 75 percent refund of the sales and use tax paid on certain renewable energy systems, including solar energy systems, expires January 1, 2020.

**Summary of Bill:** Cost Recovery Incentive Program. The Cost Recovery Program, as currently structured, is closed June 30, 2017. Participants who have entered the program by submitting a certification to the DOR prior to June 1, 2017, may continue to receive

payments through June 2020 at the rates they anticipated provided they apply to the WSU Energy Program prior to June 30, 2018.

Continuing participants may authorize the WSU Energy Program to notify and coordinate with the utility serving a system to account for and remit a one-time payment to make whole the rates participants anticipated when they first received eligibility.

Cap on Total Public Utility Tax Credits Available. The per-utility limit on total public utility taxes available as credit to fund the Cost-Recovery Program and the Production Incentive Program is 2 percent of the utility's taxable power sales in 2014, or \$250,000, whichever is greater. The WSU Energy Program must not certify additional community solar projects in any fiscal year in which 25 percent of the total funds available have already been allocated to community solar projects. The same is true for commercial-scale systems.

Production Incentive Program. Beginning July 1, 2017, a person who owns a renewable energy system may apply to the WSU Energy Program for certification establishing the person's eligibility to receive annual production incentive payments from the person's utility for a term of eight years. The following renewable energy systems are eligible:

- residential-scale system that has a nameplate capacity of 12 kW or less;
- commercial-scale system that has a nameplate capacity greater than 12 kW; or
- community solar project no larger than 500 kW administered by a nonprofit organization or a utility.

No certification may be issued after June 30, 2021. A utility's participation in the Production Incentive Program is voluntary.

Incentive Rates. The incentive rate available depends on the fiscal year (FY) of certification, the system type, and whether the system includes made-in-Washington components, and decline as follows:

<b>FY of system certification</b>	<b>Base rate - residential-scale</b>	<b>Base rate - commercial scale</b>	<b>Base rate - community solar</b>	<b>Made in Washington bonus</b>
2018	\$0.16	\$0.06	\$0.16	\$0.08
2019	\$0.14	\$0.04	\$0.14	\$0.07
2020	\$0.12	\$0.02	\$0.12	\$0.07
2021	\$0.10	\$0.02	\$0.10	\$0.06

Annual Incentive Payment Limit. The WSU Energy Program may authorize an annual payment of up to \$5,000 for a residential-scale system or community solar project participant, and \$25,000 for a commercial-scale system.

Recertification of Expanded Systems. If an additional system is added at the same location or billing meter as a commercial-scale or residential-scale system, the applicant may seek recertification of an expanded system. Recertification expires on the same day as the original certification for the residential-scale or commercial-scale and applies to the entire system. The incentive rates and program rules are those in effect as of the date of the recertification.

Ownership of Environmental Attributes. A renewable energy system owner retains ownership of the environmental attributes of the system.

Transfer of Renewable Energy Systems. System certification follows the system if the new owner notifies the WSU Energy Program of the transfer of the renewable energy system and provides an executed interconnection agreement with the utility.

Administration of the Production Incentive Program. Program management, technical review, and tracking responsibilities for administering the Cost-Recovery Program are transferred from DOR to the WSU Energy Program beginning July 1, 2017. The WSU Energy Program must require applicants to provide system operations data, including global positioning system coordinates, tilt, estimated shading, and azimuth. The WSU Energy Program must establish a fee-for-service system to accept electricity production data from the utility or customer to cover the agency's cost in obtaining the necessary information from the utility or directly from customers by electronic reporting or by mail. The fee may be deducted by the utility from their PUT credit.

The WSU Energy Program must establish a list of equipment eligible for the made-in-Washington bonus rates. The WSU Energy Program must make publicly available online all lists, technical specifications, determinations, and guidelines that it develops.

The WSU Energy Program may establish a one-time fee of \$100 per applicant to cover its costs in administering the Production Incentive Program. If the WSU Energy Program determines it is unable to implement the program within the funds provided by the fee, it must report to the Legislature. The DOR may, in consultation with the WSU Energy Program, adopt any rules necessary for administration of the program.

Production Incentive Program Data. System certifications and information contained within these documents are not confidential tax information and are subject to disclosure.

Community Solar Projects. Community solar projects may be up to 500 kW in size and must have at least ten participants, all of whom must be customers of the utility providing service at the project's location. A utility or nonprofit must administer the project in a transparent manner. Additionally, a Public Utility District (PUD) may enter into an agreement with a Joint Operating Agency (agency) to construct and own a community solar project located on property owned by the agency or that receives electric services from a PUD.

The purpose of a community solar project is to facilitate broad, equitable community investment in and access to solar power. A utility or nonprofit organization may establish a reasonable fee to cover its costs and must give project participants clear and conspicuous notice of the portion of the incentive payment that will be assessed as a fee.

Solar Module Stewardship and Takeback Program (Stewardship Program). By January 1, 2018, Ecology must establish a process to develop guidance for a Stewardship Program to guide manufacturers in developing solar module stewardship plans. The guidance must be completed by January 1, 2019. A stewardship organization may be designated by a manufacturer to operate and implement the Stewardship Program.

Each manufacturer must prepare and submit to Ecology a stewardship plan by January 1, 2020, or within 30 days of its first sale in or into the state, whichever is later. A stewardship plan must include several components including an adequate funding mechanism to finance the costs of the collection, management, and recycling of solar modules and residuals sold in or into the state by the manufacturer, such that it ensures solar modules can be delivered to take-back locations without cost to the last owner or holder.

Beginning January 1, 2021, Ecology must enforce stewardship plans. Ecology must send a written warning to a manufacturer that is not participating in a plan and may assess a penalty of up to \$10,000 for each sale of a solar module in or into Washington by a manufacturer after the initial written warning. Penalties may be appealed to the Superior Court of Thurston County within 180 days of receipt of notice. Ecology may adopt rules necessary for implementing, administering, and enforcing the chapter.

Ecology may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process. Ecology may charge every manufacturer an annual fee calculated by dividing additional administrative costs by the manufacturer's pro rata share of the Washington solar module sales in order to fund administration of the Stewardship Program. All fees collected from manufacturers must be deposited in the solar module recycling account created in the custody of the State Treasurer.

A manufacturer may participate in a national program in lieu of preparing a stewardship plan under the state program, if Ecology determines that such participation is likely to achieve environmental outcomes in Washington that are substantially equivalent to those achieved by a departmentally-approved stewardship plan and is likely to be more cost-effective for the manufacturer.

Sales Tax Incentives for Solar Equipment. The expiration date for existing renewable energy sales and use tax exemptions, as applied to solar photovoltaic systems of 500 kW or less, is changed to June 30, 2017.

Consumer Protection. Any person who sells or installs a solar module in Washington must provide the customer-owner with current information regarding the tax incentives available under law, including the scheduled expiration dates and the length of time a customer may benefit from tax incentives. A violation is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, and may be enforced by the Attorney General under the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: The current program is set to go off a cliff. There is a disincentive to use a program with three years or less. The solar industry creates a lot of jobs and we want to keep these employees working. This bill has economic benefits and requires a modest expenditure for the state. As a result of past legislation, we now have solar manufacturers that can compete in the market. We would like to see a larger carve-out for made-in-Washington components. It is hard to compete with markets outside of Washington. The state is a leader in this technology, but uncertainties surrounding solar incentives leads to staff reductions in the industry. Solar systems promote strong and viable communities. We do not want to be dependent on fossil fuels. The bill increases energy security for homeowners and businesses and reduces carbon. The bill provides good stewardship of resources. Solar and wind are clean renewable energy resources, and the bill furthers the goals of the Energy Independence Act. A recycling program will manage waste. This bill protects consumers who buy solar modules. The current solar program is inefficient and at capacity. There is no access for customers with utilities at their cap. Updating the solar program will provide fair and equal access and expand incentives for lower-income individuals. Community solar is a great way to promote solar equitably because you do not need to own your own home. However, there are current limits on community solar projects. Limiting community solar projects to utility customers is okay if a utility administers the project, but not if it is privately administered. This bill is a well worked comprehensive effort to strengthen the grid and combat global warming. It incentivizes the use of solar, and the short- and long-term investments are worthwhile.

OTHER: The industry is still new and there is not a demand for recycling yet. However, national conversations about recycling are happening; therefore, creating the state stewardship program is premature. While customers are enthusiastic participants, we need regulatory and financial certainty. The bill needs to do more to empower utilities as energy service providers. There are technological challenges in bringing resources to the grid, but we can take advantage of the utilities' knowledge. Currently, there are limits on customer participation based on system size, which does not meet the solar appetite for large commercial businesses, governments, or schools that have larger loads. We need to remain mindful of the costs to the grid and not shift solar costs to non-solar customers.

**Persons Testifying:** PRO: Senator Guy Palumbo, Prime Sponsor; Elyette Weinstein, WA League of Women Voters; Jeff Greear, Ellensburg Solar; Darrell Johnson, citizen; Paul Berendt, Itek Energy; Rich Phillips, PureSolar, Inc. Pres/CEO; Jean Lewis, Verity Credit Union; Bonnie Frye Hemphill, Solar Installers of Washington, Legislative Liaison; Stu Frothingham, Artisan Electric; Paul Benz, Faith Action Network; Mason Rolph, citizen; Frederic Liebrand, Walla Walla University and Walla Walla Community Solar; Irene Hinkle, citizen; Noah Martin, Quaker Voice on Washington Public Policy; Kirk Haffner, South Sound Solar.

OTHER: Jeff Gombosky, Energy Freedom Coalition of America; Brandon Houskeeper, Puget Sound Energy; John Rothlin, Avista.

**Persons Signed In To Testify But Not Testifying:** No one.