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**HOUSE BILL 1046**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Bateman, Duerr, Leavitt, Shewmake, Kloba, Fitzgibbon, Dolan, Ramos, Ramel, Gregerson, Goodman, Ryu, Callan, Paul, Morgan, Riccelli, Pollet, Santos, Macri, Davis, and Harris-Talley

AN ACT Relating to community solar programs; amending RCW 80.28.370 and 80.28.375; and adding a new section to chapter 80.28 RCW.

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

**Sec.**  RCW 80.28.370 and 2017 3rd sp.s. c 36 s 10 are each amended to read as follows:

The definitions in this section apply throughout this section ((~~and~~)), RCW 80.28.375, and section 2 of this act unless the context clearly requires otherwise.

(1) ((~~"Community solar company" means a person, firm, or corporation, other than an electric utility or a community solar cooperative, that owns a community solar project and provides community solar project services to project participants.~~

~~(2)~~)) "Community solar project" means ((~~a solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts~~)) one or more solar energy systems that provide project participants the opportunity to share the costs and benefits associated with the generation of electricity by solar energy systems.

(2) "Community solar project manager" means the entity identified as having responsibility for managing the operation of a community solar project and, if applicable, for maintaining contact with the investor-owned utility that procures electricity from the community solar project. A community solar project manager may be:

(a) An investor-owned utility; or

(b) An independent third party.

(3) "Community solar project services" means the provision of electricity generated by a community solar project, or the provision of the financial benefits associated with electricity generated by a community solar project, to multiple project participants, and may include other services associated with the use of the community solar project such as system monitoring and maintenance, warranty provisions, performance guarantees, and customer service.

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

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

(6) "Low-income" has the same meaning as defined in RCW 19.405.020.

(7) "Low-income service provider" includes, but is not limited to, a local community action agency or local community service agency designated by the department of commerce under chapter 43.63A RCW, a local housing authority, a tribal housing authority, a low-income tribal housing program, an affordable housing provider, a food bank, or other nonprofit organization whose primary service supports low-income households.

(8) "Project participant" means a customer who enters into a lease, power purchase agreement, loan, direct ownership, or other financial agreement with a community solar company in order to obtain a beneficial interest in((~~, other than direct ownership of,~~)) a community solar project.

((~~(6)~~)) (9) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(10) "Unsubscribed energy" means the electricity generated by a community solar project that is not subscribed to by a project participant.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

(1)(a) The commission shall adopt by rule a program for the procurement of electricity from community solar projects. As part of this program the commission shall:

(i) Adopt rules prescribing what qualifies a community solar project to participate in the program;

(ii) Prescribe the form and manner by which project managers may apply for certification and the form and manner by which qualified community solar projects receive certification for participation in the program;

(iii) Require, by rule or order, investor-owned utilities to enter into a 20 year or longer power purchase agreement with a certified community solar project;

(iv) Determine a methodology by which 40 percent of the total program generating capacity is made available for use by low-income consumers and low-income service provider consumers of electricity; and

(v) Periodically review and adjust the program described in this subsection.

(b) The commission shall adopt rules under (a) of this subsection that, at a minimum:

(i) Minimize the shifting of costs from the program to ratepayers that do not own or participate in a community solar project;

(ii) Incentivize consumers of electricity to be project participants;

(iii) Protect project participants from undue financial hardship; and

(iv) Protect the public interest.

(c) The commission may suspend the program adopted under this subsection if the commission has good cause to suspend the program.

(2) A community solar project must include at least one solar energy system located in this state.

(3) A community solar project manager may offer ownership in or participation in a community solar project only to consumers of electricity that are:

(a) In this state; and

(b) A customer of the electric utility where the community solar project is located.

(4)(a) A community solar project manager may offer proportional ownership in or proportional participation in a community solar project in any amount that does not exceed a potential project participant's average annual consumption of electricity.

(b) Any value associated with the generation of electricity in excess of a project participant's annual consumption as limited by (a) of this subsection must be, on March 31st of each calendar year, used by the investor-owned utility procuring electricity from the community solar project in support of low-income customers or low-income service provider customers.

(5)(a) The commission may adopt a rate for an investor-owned utility to use in crediting a project participant's electric bill. An investor-owned utility shall credit a project participant's electric bill for electricity generated by a community solar project for the project participant.

(b) The commission may adopt a rate for the investor-owned utility's purchase of unsubscribed energy from a community solar project manager.

(6)(a) All start-up costs prudently incurred during the development or modification of the program established under this section are recoverable in the rates of an investor-owned utility.

(b) Except as otherwise provided in this section, project participants bear the costs and benefits of constructing and operating a community solar project.

(c) Costs incurred by an investor-owned utility under the terms of a power purchase agreement entered into pursuant to subsection (1)(a)(iii) of this section are recoverable in the rates of an investor-owned utility. Moneys collected pursuant to imposing those rates, under the terms of a power purchase agreement entered into pursuant to subsection (1)(a)(iii) of this section, may be transferred to a community solar project manager for the purpose of operating a community solar project.

(7) All renewable energy certificates that are associated with the generation of electricity by a community solar project are either owned by the investor-owned utility or retired on behalf of the project participant.

**Sec.**  RCW 80.28.375 and 2017 3rd sp.s. c 36 s 11 are each amended to read as follows:

(1) No community solar ((~~company~~)) project manager may engage in business in this state except in accordance with the provisions of this chapter. Engaging in business as a community solar company includes advertising, soliciting, offering, or entering into an agreement to own a community solar project and provide community solar project services to electric utility customers.

(2) ((~~A community solar company must register with the commission before engaging in business in this state or applying for certification from the Washington State University extension energy program under RCW 82.16.165(1).~~)) Registration with the commission as a community solar ((~~company~~)) project manager must occur on an annual basis. The registration must be on a form prescribed by the commission and contain that information as the commission may by rule require, but must include at a minimum:

(a) The name and address of the community solar ((~~company~~)) project manager;

(b) The name and address of the community solar ((~~company's~~)) project manager's registered agent, if any;

(c) The name, address, and title of each officer or director;

(d) The community solar ((~~company's~~)) project manager's most current balance sheet;

(e) The community solar ((~~company's~~)) project manager's latest annual report, if any;

(f) A description of the services the community solar ((~~company~~)) project manager offers or intends to offer, including financing models; and

(g) Disclosure of any pending litigation against it.

(3) As a precondition to registration, the commission may require the procurement of a performance bond or other mechanism sufficient to cover any advances or deposits the community solar ((~~company~~)) project manager may collect from project participants or order that the advances or deposits be held in escrow or trust.

(4) The commission may deny registration to any community solar ((~~company~~)) project manager that:

(a) Does not provide the information required by this section;

(b) Fails to provide a performance bond or other mechanism, if required;

(c) Does not possess adequate financial resources to provide the proposed service; or

(d) Does not possess adequate technical competency to provide the proposed service.

(5) The commission must take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

(6) The commission may charge a community solar ((~~company~~)) project manager an annual application fee to recover the cost of processing applications for registration under this section.

(7) The commission may adopt rules that describe the manner by which it will register a community solar ((~~company~~)) project manager, ensure that the terms and conditions of community solar projects or community solar project services comply with the requirements of chapter 36, Laws of 2017 3rd sp. sess., establish the community solar ((~~company's~~)) project manager's responsibilities for responding to customer complaints and disputes, and adopt annual reporting requirements. In addition to the application fee authorized under subsection (6) of this section, the commission may adopt regulatory fees applicable to community solar companies pursuant to RCW 80.04.080, 80.24.010, and 80.24.020. Such fees may not exceed the cost of ensuring compliance with this chapter.

(8) The commission may suspend or revoke a registration upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when it finds that a registered community solar ((~~company~~)) project manager or its agent has violated this chapter or the rules of the commission, or that the community solar ((~~company~~)) project manager or its agent has been found by a court or governmental agency to have violated the laws of a state or the United States.

(9) For the purpose of ensuring compliance with this chapter, the commission may issue penalties against community solar ((~~companies~~)) project managers for violations of this chapter as provided for public service companies pursuant to chapter 80.04 RCW.

(10) Upon request of the commission, a community solar ((~~company~~)) project manager registered under this section must provide information about its community solar projects or community solar project services.

(11) A violation of this section constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of chapter 36, Laws of 2017 3rd sp. sess. are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(12) For the purposes of RCW 19.86.170, actions or transactions of a community solar ((~~company~~)) project manager may not be deemed otherwise permitted, prohibited, or regulated by the commission.

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