

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5714

Chapter 161, Laws of 2022

67th Legislature
2022 Regular Session

SOLAR CANOPIES—SALES AND USE TAX DEFERRAL PROGRAM

EFFECTIVE DATE: July 1, 2022

Passed by the Senate March 4, 2022
Yeas 29 Nays 19

DENNY HECK

President of the Senate

Passed by the House March 9, 2022
Yeas 57 Nays 40

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved March 24, 2022 9:20 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5714** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 24, 2022

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5714

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle, Lias, Gildon, Lovelett, Mullet, Nguyen, and Rolfes)

READ FIRST TIME 01/28/22.

1 AN ACT Relating to creating a sales and use tax deferral program
2 for solar canopies placed on large-scale commercial parking lots and
3 other similar areas; adding a new chapter to Title 82 RCW; and
4 providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that while
7 Washington state has significant solar resources and increasing
8 electricity generation from solar installations, these are
9 concentrated in rooftop installations and in utility-scale solar
10 projects on rural lands that could otherwise be devoted to crop
11 lands, grazing lands, or other productive uses. A recent study
12 estimates that in the United States about 51 percent of utility-scale
13 solar facilities are in deserts, 33 percent are on croplands, 10
14 percent are in grasslands and forests, and only 2.5 percent of solar
15 power comes from urban areas.

16 (2) The legislature further finds that in urbanized areas the
17 land devoted to transportation, both moving and parking vehicles, is
18 substantial and becomes unavailable for additional uses. Surface
19 parking lots that serve large commercial, industrial, and residential
20 institutional developments present an opportunity for solar power on
21 parking lot canopies to gain added benefits for the use of this land.

1 Solar canopies would significantly contribute to the state's goals of
2 reducing greenhouse gas emissions from the electricity sector and
3 boost overall electricity supplies as the state increases the
4 electrification of transportation and powering and heating buildings.
5 Additionally, solar canopies provide weather protection in summer and
6 winter to both the vehicles under the canopies and people moving from
7 their cars into the buildings served by the parking lot.

8 (3) The legislature further finds that the initial capital costs
9 of installing solar generation on parking lot canopies will in most
10 cases be fully amortized over time with the power generated and sold
11 into the electricity system, but that initial capital costs may deter
12 incorporation of installations into new projects. For these reasons,
13 the legislature intends to provide for a deferral of state and local
14 sales and use taxes for eligible costs of the construction of a solar
15 canopy at qualifying commercial centers.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Applicant" means a person applying for a tax deferral under
20 this chapter.

21 (2) "Eligible area" means a qualifying commercial center.

22 (3) "Eligible investment project" means an investment project
23 that is located, as of the date the application required by section 3
24 of this act is received by the department, in an eligible area.

25 (4)(a) "Initiation of construction" means the date that a
26 building permit is issued under the building code adopted under
27 RCW 19.27.031 for:

28 (i) Construction of the eligible investment project, if the
29 underlying ownership of the building vests exclusively with the
30 person receiving the economic benefit of the deferral;

31 (ii) Construction of the eligible investment project, if the
32 economic benefits of the deferral are passed to a lessee as provided
33 in section 8 of this act; or

34 (iii) Tenant improvements for the eligible investment project, if
35 the economic benefits of the deferral are passed to a lessee as
36 provided in section 8 of this act.

37 (b) "Initiation of construction" does not include soil testing,
38 site clearing and grading, site preparation, or any other related

1 activities that are initiated before the issuance of a building
2 permit for the construction of the foundation of the building.

3 (c) If the investment project is a phased project, "initiation of
4 construction" applies separately to each phase.

5 (5) "Investment project" means an investment in a qualified solar
6 canopy including labor and services rendered in the planning,
7 installation, and construction of the project.

8 (6) "Meaningful construction" means an active construction site,
9 where excavation of a building site, laying of a structure
10 foundation, or other tangible signs of construction are taking place
11 and that clearly show a progression in the construction process at
12 the location designated by the taxpayer in the application for
13 deferral. Planning, permitting, or land clearing before excavation of
14 the building site, without more, do not constitute "meaningful
15 construction."

16 (7) "Operationally complete" means the solar canopy has received
17 its final electrical inspection and is connected to the electrical
18 grid.

19 (8) "Person" has the meaning given in RCW 82.04.030.

20 (9) "Qualified solar canopy" means construction of a new solar
21 canopy that has an area of at least 50,000 square feet.

22 (10) "Qualifying commercial center" means a property currently
23 used for retail, industrial, office, or other commercial purposes,
24 containing a parking area or other area dedicated for both vehicle
25 use and placement of a solar canopy.

26 (11) "Recipient" means a person receiving a tax deferral under
27 this chapter.

28 (12)(a) "Solar canopy" means an elevated structure, or multiple
29 structures, containing a solar energy system, as defined in RCW
30 82.16.110, with a nameplate capacity of at least one megawatt of
31 alternating current.

32 (b) "Solar canopy" includes the solar energy system, power lines,
33 and any equipment required to connect the solar canopy to the
34 electrical grid.

35 NEW SECTION. **Sec. 3.** (1) Application for deferral of taxes
36 under this chapter must be made before initiation of the construction
37 of the investment project. The application must be made to the
38 department in a form and manner prescribed by the department. The
39 application must contain information regarding the location of the

1 investment project, estimated or actual costs, time schedules for
2 completion and operation, anticipated nameplate capacity and use of
3 the electricity produced by the solar canopy, and other information
4 required by the department. The department must rule on the
5 application within 60 days. The department must compile this
6 information for use by the joint legislative audit and review
7 committee in its evaluation of the tax preference under section 9 of
8 this act.

9 (2) The department may not accept applications for the deferral
10 under this chapter after June 30, 2032.

11 NEW SECTION. **Sec. 4.** The department must issue a sales and use
12 tax deferral certificate for state and local sales and use taxes due
13 under chapters 82.08, 82.12, and 82.14 RCW on each eligible
14 investment project.

15 NEW SECTION. **Sec. 5.** (1) The recipient of a deferral
16 certificate under section 4 of this act must begin meaningful
17 construction on an eligible investment project within one year of
18 receiving a deferral certificate, unless construction was delayed due
19 to circumstances beyond the recipient's control. Lack of funding is
20 not considered a circumstance beyond the recipient's control.

21 (2) If the recipient does not begin meaningful construction on an
22 eligible investment project within one year of receiving a deferral
23 certificate, the deferral certificate issued under section 4 of this
24 act is invalid and taxes deferred under this chapter are due
25 immediately.

26 (3) A recipient of a deferral certificate under section 4 of this
27 act must notify the department and update the information originally
28 provided in the application if the solar canopy, at the time of
29 completion, will produce an amount of electricity that is less than
30 85 percent of the nameplate capacity originally assumed.

31 (4) Each recipient of a deferral of taxes under this chapter must
32 file a complete annual tax performance report with the department
33 under RCW 82.32.534 for the year the solar canopy is certified as
34 operationally complete and for the subsequent seven years. If the
35 solar canopy ceases to be connected to the electrical grid, the
36 annual tax performance report is no longer required beginning on the
37 date the solar canopy was disconnected from the electrical grid.

1 NEW SECTION. **Sec. 6.** (1) Except as otherwise provided in this
2 chapter, the recipient of the deferral under this chapter must
3 receive a reduction of the amount of state and local sales and use
4 tax to be repaid under this act as follows:

5 (a) Fifty percent of the sales and use tax deferred, if the
6 department of labor and industries certifies that the eligible
7 investment project includes procurement from and contracts with
8 women, minority, or veteran-owned businesses; procurement from and
9 contracts with entities that have a history of complying with federal
10 and state wage and hour laws and regulations; apprenticeship
11 utilization; and preferred entry for workers living in the area where
12 the eligible investment project is being constructed. In the event
13 that an eligible investment project is built without one or more of
14 these standards, and a project developer or its designated principal
15 contractor demonstrates that it has made all good faith efforts to
16 meet the standards but was unable to comply due to lack of
17 availability of qualified businesses or local hires, the department
18 of labor and industries may certify that the developer complied with
19 one or more standards;

20 (b) Seventy-five percent of the sales and use tax deferred, if
21 the department of labor and industries certifies that the eligible
22 investment project complies with (a) of this subsection and
23 compensates workers at prevailing wage rates as determined by the
24 department of labor and industries; or

25 (c) One hundred percent of the sales and use tax deferred, if the
26 department of labor and industries certifies that the eligible
27 investment project is developed under a community workforce agreement
28 or project labor agreement.

29 (2)(a) The department of labor and industries must adopt
30 emergency and permanent rules to:

31 (i) Define and set minimum requirements for all labor standards
32 identified in subsection (1) of this section as well as documentation
33 requirements and a certification process. The certification process
34 and timeline must be designed to prevent undue delay to project
35 development; and

36 (ii) Set requirements for all good faith efforts under subsection
37 (1)(a) and (b) of this section. Requirements for all good faith
38 efforts must be designed to maximize the likelihood that the project
39 is completed with the standards, and include: Proactive outreach to
40 women, minority, and veteran-owned businesses; advertising in local

1 community publications and publications appropriate to identified
2 firms and with the office of minority and women's business
3 enterprises; participating in community job fairs, conferences, and
4 trade shows; and other measures.

5 (b) The standards for procurement from and contracts with women
6 or minority-owned businesses under subsection (1)(a) of this section
7 must include a requirement that the recipient of the deferral consult
8 with the office of minority and women's business enterprises to
9 develop a plan to meet the standards or good faith efforts. The
10 requirements for good faith efforts must include the office of
11 minority and women's business enterprises review to determine
12 compliance with the plan.

13 (c) The labor standard for procurement from and contracts with
14 veteran-owned businesses under subsection (1)(a) of this section must
15 include a requirement that the recipient of the deferral consult with
16 the department of veterans affairs to develop a plan to meet the
17 standards or good faith efforts. The requirements for good faith
18 efforts must include the department of veterans affairs review to
19 determine compliance with the plan.

20 (d) The department of labor and industries must consult with the
21 office of minority and women's business enterprises, the department
22 of veterans affairs, and the Washington apprenticeship and training
23 council in setting standards and good faith efforts.

24 NEW SECTION. **Sec. 7.** (1) Except as otherwise provided in this
25 chapter, the recipient must begin paying the deferred taxes in the
26 second year after the date certified by the department as the date on
27 which the eligible investment project has been operationally
28 completed. The first payment of 12.5 percent of the deferred taxes is
29 due on December 31st of the second calendar year after the certified
30 date, with subsequent annual payments of 12.5 percent of the deferred
31 taxes due on December 31st for each of the following seven years.

32 (2) The department may authorize an accelerated repayment
33 schedule upon request of the recipient.

34 (3) If the investment project is not operationally complete
35 within two calendar years from the issuance of the tax deferral
36 certificate, or if, on the basis of the tax performance report under
37 RCW 82.32.534 or other information, the department finds that an
38 investment project is not connected to the electrical grid and
39 producing solar energy at any time during the calendar year in which

1 the investment project is certified by the department as having been
2 operationally completed, or at any time during any of the seven
3 succeeding calendar years, a portion of deferred taxes is immediately
4 due according to the following schedule:

5	Year in which	Percent of deferred taxes
6	use occurs	due
7	1	100
8	2	100
9	3	87.5
10	4	75
11	5	62.5
12	6	50
13	7	37.5
14	8	25
15	9	12.5

16 (4) The department must assess interest at the rate provided for
17 delinquent taxes, but not penalties, retroactively to the date of
18 deferral for a recipient who must repay deferred taxes under this
19 chapter because the department has found that an investment project
20 is not eligible for tax deferral. The debt for deferred taxes is not
21 extinguished by insolvency or other failure of the recipient.

22 (5) Transfer of ownership does not terminate the deferral. The
23 deferral is transferred, subject to the successor meeting the
24 eligibility requirements of this chapter, for the remaining periods
25 of the deferral.

26 NEW SECTION. **Sec. 8.** A lessor or owner of an eligible
27 investment project is not eligible for a deferral under this chapter
28 unless:

29 (1) The underlying ownership of the qualified solar canopy vests
30 exclusively in the same person; or

31 (2) (a) The lessor by written contract agrees to pass the economic
32 benefit of the deferral to the lessee;

33 (b) The lessee that receives the economic benefit of the deferral
34 agrees in writing with the department to complete the annual tax
35 performance report required under RCW 82.63.020(2); and

1 (c) The economic benefit of the deferral passed to the lessee is
2 no less than the amount of tax deferred by the lessor and is
3 evidenced by written documentation of any type of payment, credit, or
4 other financial arrangement between the lessor or owner of the
5 eligible investment project and the lessee.

6 NEW SECTION. **Sec. 9.** This section is the tax preference
7 performance statement for the sales and use tax deferral program
8 created in sections 4 and 7, chapter . . ., Laws of 2022 (sections 4
9 and 7 of this act). This performance statement is only intended to be
10 used for subsequent evaluation of the tax preference. It is not
11 intended to create a private right of action by any party or be used
12 to determine eligibility for preferential tax treatment.

13 (1) The legislature categorizes the tax preference created in
14 this act as one intended to induce certain designated behavior by
15 taxpayers, as indicated in RCW 82.32.808(2)(a).

16 (2) It is the legislature's specific public policy objective to
17 incentivize the construction of solar canopies in the state of
18 Washington in order to reduce greenhouse gas emissions from the
19 electricity sector and boost overall electricity supplies as the
20 state increases the electrification of transportation and powering
21 and heating buildings.

22 (3) Pursuant to chapter 43.136 RCW, the joint legislative audit
23 and review committee must review the sales and use tax deferral
24 created in this act by December 31, 2030. The review must
25 specifically evaluate:

26 (a) The number of solar canopies constructed in the state subject
27 to a sales and use tax deferral under this act;

28 (b) The average and total electric output of solar canopies
29 subject to a sales and use tax deferral under this act;

30 (c) The total beneficiary savings from the tax preference created
31 in this act;

32 (d) The estimated reduction in greenhouse gas emissions resulting
33 from energy produced from solar canopies assuming an equivalent
34 amount of energy would have otherwise been generated through the
35 combustion of fossil fuels; and

36 (e) Any other metrics the committee finds relevant to the
37 evaluation of the tax preference created in this act in meeting its
38 public policy objective.

1 (4) In order to obtain the data necessary to perform the review
2 in subsection (3) of this section, the joint legislative audit and
3 review committee shall use information collected, compiled, and
4 provided by the department of revenue. The committee may also contact
5 recipients of the sales and use tax deferral under this act to
6 confirm details of solar canopies.

7 NEW SECTION. **Sec. 10.** Sections 1 through 9, 11, and 12 of this
8 act constitute a new chapter in Title 82 RCW.

9 NEW SECTION. **Sec. 11.** The automatic expiration date for tax
10 preferences in RCW 82.32.805 does not apply to this act.

11 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2022.

Passed by the Senate March 4, 2022.

Passed by the House March 9, 2022.

Approved by the Governor March 24, 2022.

Filed in Office of Secretary of State March 24, 2022.

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