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## Environment & Energy Committee

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### HB 1847

**Brief Description:** Prioritizing the development of distributed alternative energy resources in targeted circumstances.

**Sponsors:** Representatives Doglio, Reed, Parshley and Ramel.

#### Brief Summary of Bill

- Amends numerous state laws, including the Clean Energy Transformation Act, the Growth Management Act, the State Environmental Policy Act, and multiple tax laws, to address certain types of distributed energy projects and activities.

**Hearing Date:** 2/10/25

**Staff:** Jacob Lipson (786-7196).

#### Background:

##### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent, or the lead agency, completing an environmental checklist to identify and evaluate probable environmental impacts. The Department of Ecology (Ecology) has adopted rules that spell out the elements of the environment whose impacts must be considered in a SEPA checklist and any subsequent SEPA environmental review. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the

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form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Under SEPA laws and in SEPA rules adopted by Ecology, certain proposals or agency actions are exempt from SEPA requirements, including the installation of an electric vehicle battery charging station and the installation of accessory solar energy generation equipment on or attached to existing structures, if it does not expand the existing footprint or size of a building.

#### Clean Energy Transformation Act.

Under the Clean Energy Transformation Act (CETA), electric utilities must eliminate coal-fired resources from their allocation of electricity by December 31, 2025. Each electric utility must make all retail sales of electricity to Washington customers greenhouse gas (GHG) neutral by January 1, 2030, and maintain compliance through December 31, 2044. By January 1, 2045, each electric utility must meet 100 percent of its retail electric load to Washington customers using non-emitting electric generation and electricity from renewable resources.

All electric utilities are required to develop a clean energy implementation plan every four years, starting January 1, 2022, to establish interim targets for energy efficiency and renewable energy.

#### Resource Planning by Electric Utilities.

Each electric utility must develop a Resource Plan. Utilities with 25,000 or more customers that are not fully served by the Bonneville Power Administration (BPA) must develop Integrated Resource Plans (IRPs). An IRP must include forecasts of projected customer demand and assessments of commercially available conservation and efficiency resources and renewable and nonrenewable technologies. Utilities with fewer than 25,000 customers or that are fully served BPA customers must complete a Resource Plan with fewer required components than IRPs.

Integrated Resource Plans and other Resource Plans must be updated at least every two years, and must include specified contents related to how the utility intends to meet CETA obligations:

- For IRPs, this planning obligation includes a 10-year clean energy action plan for implementing CETA requirements at the lowest reasonable cost and at an acceptable resource adequacy standard, as well as a long-range assessment describing the mix of supply side generating resources and conservation efficiency resources that will meet current and projected needs under CETA.
- Other resource plans must include a description of how the utility plans to implement CETA over a 10-year period.

#### Community Solar.

A community solar project is a solar energy system that can generate no more than 1000 kilowatts (kW) of direct current electricity. There are requirements for community solar companies who wish to engage in business in the state, including that they must register with the Utilities and Transportation Commission (UTC).

### Alternative Energy Resources.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The laws that provide for a facility to seek certification through the EFSEC process require the construction, reconstruction, and enlargement of certain types of facilities to use the EFSEC process.

Energy facilities of any size that exclusively use the following alternative energy resources (alternative energy resources) may opt to use the EFSEC siting process:

- wind;
- solar energy;
- geothermal energy;
- renewable natural gas;
- wave or tidal action;
- biomass energy based on certain solid organic fuels; and
- renewable or green electrolytic hydrogen.

### Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land-use planning framework for counties and cities in Washington. The GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

The GMA provides that all counties and cities, regardless of whether they are planning jurisdictions, are obligated to designate, where appropriate, natural resource lands of long-term commercial significance, including agricultural resource lands. Areas of long-term commercial significance must be designated based on their:

- growing capacity;
- productivity; and
- soil composition of the land for long-term commercial production, taking into consideration the land's proximity to population areas, and the possibility of more intense land uses.

Under the GMA, counties and cities are authorized to use a variety of innovative zoning techniques in designated agricultural lands of long-term commercial significance that are designed to conserve agricultural land and encourage the agricultural economy. These techniques can include agricultural zoning that allows nonagricultural accessory uses and

activities that support, promote, or sustain agricultural operations and production. Accessory uses must be located, designed, and operated so as not to interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring property. Nonagricultural accessory uses and activities must be consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site, and must not be located outside the general area already developed for buildings and residential uses and must not otherwise convert more than 1 acre of land to nonagricultural uses.

#### Open Space and Land Use Taxation Act.

All property is subject to a property tax each year based on the property's highest and best use, unless a specific exemption is provided by law. The Washington Constitution authorizes agricultural, timber, and open space lands to be valued on the basis of their current use rather than fair market value. Two programs of current use valuation have been established: one program for forest lands and a second program that include open space lands, farm and agricultural lands, and timber lands (Open Space Program). To qualify for the Open Space Program, farm and agricultural lands must be 20 or more acres and devoted primarily to commercial agricultural purposes or enrolled in the federal Conservation Reserve Program. Parcels of land less than 20 acres devoted primarily to agriculture may qualify for the Current Use Valuation Program if certain income tests are met. Farm and agricultural land also includes certain incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.

If the property no longer satisfies the criteria for classification, the county assessor notifies the owner in writing that the property will be removed from the program. When the property is removed from its current use classification, back taxes plus interest must be paid, plus an additional 20 percent penalty. For properties in the Open Space Program, back taxes represent the tax benefit received over the most recent seven years. There are some exceptions to the requirement for payment of back taxes and penalties.

#### Leasehold Excise Tax.

State leasehold excise taxes are levied and collected on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest. A leasehold interest is an interest in publicly owned real or personal property that exists by virtue of any lease, permit, license, or other written or verbal agreement between a public owner and a person who would not be exempt from property taxes if that person owned the property. The leasehold excise tax is levied at a rate of 12.84 percent of taxable rent.

The legislative body of any county or town may also levy and collect a leasehold excise tax on leasehold interests in publicly owned property within the territorial limits of the county or city. The tax levied by a county may not exceed 6 percent of taxable rent; by a city, it may not exceed 4 percent of taxable rent. If imposed, the local leasehold tax is credit against the state tax, so the maximum total rate remains 12.84 percent.

There are several leasehold excise tax exemptions.

## Summary of Bill:

### Distributed Energy Priorities.

The following facilities and activities are determined to be distributed energy priorities (DEP):

- solar energy generation, and accompanying energy storage and electrical transmission and distribution, including electric vehicle charging, when located:
  - within an easement, right of way, or existing footprint of electrical transmission facilities;
  - within an easement, right of way, or existing footprint of state highways or county roads;
  - on structures over or enclosing irrigation canals, drainage ditches, certain types of reservoirs, and similar water impoundments that don't contain salmon or steelhead trout runs;
  - on elevated structures over parking lots;
  - on lands within an airport or restricted from other developments by airport operations;
  - on closed or capped portions of landfills and on reclaimed or former surface mine lands or contaminated sites;
  - on existing structures; and
  - as agrivoltaics facilities.
- wind energy generation that is not required to have obstruction lighting and does not have any wind turbines with a hub height above 75 feet;
- energy storage facilities located:
  - within an easement, right of way, or existing footprint of electrical transmission facilities;
  - within an easement, right of way, or existing footprint of state highways or county roads;
  - on lands within an airport or restricted from other developments by airport operations;
  - on closed or capped portions of landfills and on reclaimed or former surface mine lands or contaminated sites; and
  - on existing structures
- programs that reduce electricity demand, consumption, or provide electricity storage or ancillary services to an electric utility; and
- programs that reduce energy demand, manage the level or timing of energy consumption, or provide thermal energy storage.

Agrivoltaics facilities must meet certain criteria in order to qualify as a DEP, including that the facility must:

- be designed to be operated coincident with the continued productive agricultural use of the land or provision of ecological value;
- not permanently or significantly degrade the productivity of the land after the cessation of the operation of the facility;
- not involve the sale of a water right associated with the land;

- not cause the temporary or permanent conversion of land from agricultural uses;
- be designed to continue to produce marketable and measurable agricultural products or ecosystem services under a business plan; and
- for facilities featuring continued agricultural production, be designed and installed in a manner that supports the continuation of viable farm operation for the life of the array.

#### Government Agency Actions Addressing Distributed Energy Priorities.

The Department of Commerce's (Commerce) State Energy Office must assist in identifying, coordinating, and implementing opportunities for state government to facilitate the development of alternative energy resources, including DEP, as a regulator, energy consumer, or property and asset possessor.

By December 1, 2026 eight state agencies—the Departments of Transportation; Natural Resources; Enterprise Services; Fish and Wildlife; Corrections; Social and Health Services; Children, Youth, and Families; and the Parks and Recreation Commission—as well as the state's institutions of higher education (covered state agencies), must identify real property assets such as: rooftops, parking structures, and adjoining lands that are the most suitable for alternative energy resources, energy storage, or electricity transmission and distribution. This action must be carried out in consultation with Commerce, Ecology, and electric utilities and must consider specified factors. Each agency must prioritize the identification of DEP assets. Commerce must submit a report to the Legislature and the interagency clean energy siting coordinating council by December 1, 2026, that identifies the lands with real property assets for DEP development for these state agencies.

By December 1, 2028 Commerce must publish 2035 targets based on the 2026 report for each of the covered state agencies for making available real property assets for DEP. These targets must include separate agencywide targets for electricity production capacity of DEP, energy storage capacity, and electricity transmission and distribution capacity. Each covered state agency must directly carry out development of identified real property assets, or proactively make real property assets available for development through leases, agreements, or other mechanisms to enable the achievement of the targets set by Commerce.

Each covered state agency is declared to have the duty to facilitate, in a manner that does not conflict with the other agency duties, the development of real property assets within its purview that are suitable for DEP, energy storage, and electricity transmission and distribution. Counties, cities, and port districts are encouraged to facilitate the development of DEP, energy storage development, and electrical transmission and distribution.

Subject to appropriation, Commerce must administer a matching grant program for counties, cities, municipal corporations, and nonprofit organizations that provide wastewater utility services to identify and develop or make available real property assets for DEP energy storage, and electricity transmission and distribution. Commerce must provide technical assistance upon request.

### State Environmental Policy Act.

Ecology must evaluate, in light of the goals of CETA and state emission limits, the appropriateness of SEPA tools to expedite environmental review processes for alternative energy resources, energy storage, and electricity transmission and distribution unlikely to have significant adverse environmental impacts. For each category of projects, Ecology may:

- categorically exempt projects from SEPA. Categorical exemptions may be limited to size thresholds or specified circumstances or locations; or
- Identify standardized mitigation for potential adverse environmental impacts that, when implemented, must be considered in a SEPA threshold determination.

Under Ecology rules, categorical exemptions or standardized mitigation must at minimum be available to DEP and to the construction of structures 1,000 square feet or smaller for solar energy generation, other than DEP or solar structures over waters. Ecology must consider specified factors, including considering input from specified parties, in adopting rules.

### Distributed Energy Priority Targets for Electric Utilities.

Under CETA, the clean energy implementation plans of electric utilities must propose specific targets for DEP and community solar. Each electric utility with more than 25,000 customers must establish annual targets for the retail sale of electricity from DEP and community solar located in Washington. These DEP and community solar targets must be a percentage of the annual CETA clean energy implementation plan targets, and at a minimum must include a target of 10 percent of the utility's clean energy target from sources and demand programs that initiate operations after August 1, 2025. Each utility must achieve the DEP and community solar targets, and are subject to CETA penalties of 60 dollars per megawatt hour for a failure to meet a target.

Electric utility resource plans and integrated resource plans must include the DEP and community solar targets alongside other CETA obligations addressed in the resource plan or integrated resource plan.

### Tax Policy.

Energy storage and DEP are exempt from leasehold excise tax.

Lands on which an agrivoltaics facility is located may be considered agricultural or open space land for purposes of the Open Space and Land Use Taxation Act. The addition of an agrivoltaics facility does not constitute a reclassification, withdrawal, or removal of lands under the Open Space and Land Use Taxation Act, and thus does not require the payment of seven years of back taxes plus a 20 percent penalty.

### Growth Management Act.

Developments that place solar panels in agricultural lands of long-term significance and that meet other standards applicable to agricultural or nonagricultural accessory uses under the GMA may be covered by a county's innovative zoning techniques. Agrivoltaics facilities are also an accessory use that may be covered by a county's innovative zoning techniques, and counties may not exclude agrivoltaics facilities from designated agricultural lands of long-term significance.

Agrivoltaics facilities are determined not to interfere with the continued use of agricultural resource lands under the GMA, and GMA-planning county regulations must be revised to reflect this.

**Appropriation:** None.

**Fiscal Note:** Requested on February 4, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.