

HOUSE BILL REPORT

HB 1847

As Reported by House Committee On:
Environment & Energy

Title: An act relating to prioritizing the development of distributed alternative energy resources in targeted circumstances.

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

Sponsors: Representatives Doglio, Reed, Parshley and Ramel.

Brief History:

Committee Activity:

Environment & Energy: 2/10/25, 2/18/25 [DPS].

Brief Summary of Substitute Bill

- Defines certain types of distributed energy projects and activities as distributed energy priorities (DEP), and directs the Department of Commerce to assist state agencies in identifying, coordinating, and implementing opportunities for state government to facilitate DEP as a regulator, energy consumer, or possessor of property and assets.
- Requires the Department of Ecology to evaluate the appropriateness of standardized mitigation or categorical exemptions under the State Environmental Policy Act for DEP.
- Specifies that the addition of agrivoltaics facilities to agricultural or open space land does not constitute the conversion that would require the payment of back taxes, interest, and penalties associated with the conversion of agricultural or open space land.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Doglio, Chair; Hunt, Vice Chair; Abbarno, Abell, Barnard, Berry, Duerr, Fey, Fitzgibbon, Kloba, Ley, Mena, Ramel, Stearns, Street, Stuebe, Wylie and Ybarra.

Minority Report: Without recommendation. Signed by 3 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Mendoza.

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 form of an environmental impact statement. 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 the SEPA laws and in the SEPA rules adopted by Ecology, certain proposals or agency actions are exempt from the 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.

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 includes 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.

Summary of Substitute Bill:

Distributed Energy Priorities.

Certain facilities and activities are determined to be distributed energy priorities (DEP), including:

- 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 do not contain salmon or steelhead trout runs;
 - on elevated structures over parking lots;
 - on lands within a transportation facility or restricted from other developments by transportation facility 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 a transportation facility or restricted from other developments by transportation facility 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.

State Environmental Policy Act.

Ecology must evaluate, in light of the goals of the Clean Energy Transformation Act (CETA) and state greenhouse gas emission limits, the appropriateness of SEPA tools to expedite environmental review processes for DEP and the construction of structures 1,000 square feet or smaller for solar energy generation unlikely to have significant adverse environmental impacts. For each category of projects, Ecology may:

- categorically exempt projects from the 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.

In adopting rules, Ecology must consider specified factors, including federal agency guidance, rules, and best management practices, and must consider input from specified parties. Ecology must aspire to finalize the SEPA rules on these topics by January 1, 2028.

Land 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 interest and a 20 percent penalty.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:

- eliminates provisions addressing alternative energy resources (wind, solar, geothermal, renewable natural gas, wave or tidal action, biomass, and hydrogen), instead focusing solely on DEP (solar in specified locations, wind that is not utility scale, energy storage, and energy and electricity demand programs) from the portions of the bill providing for SEPA categorical exemptions and standardized mitigation, and that establish a duty of the Department of Commerce (Commerce) to identify opportunities for state government to facilitate the use of state property and assets;
- adds lands within or precluded from development by railroads and other transportation facilities to one of the categories of DEP to include lands within or precluded from development by transportation facilities in addition to airports, and including railroad facilities;
- eliminates the requirement that state agencies identify state property and assets for DEP, and for Commerce to set related targets;
- eliminates the establishment of duties for state agencies with respect to DEP;
- eliminates the grant program for local governments and others to identify real property assets for DEP;
- eliminates language encouraging local governments to develop DEP;
- eliminates the establishment of targets under the CETA for DEP, and related changes to utility resource planning obligations;
- eliminates the leasehold excise tax exemption for DEP;
- eliminates changes to the Growth Management Act related to agrivoltaics; and
- clarifies that back taxes and penalties under the Open Space and Land Use Taxation Act do not apply to agrivoltaics facility additions only if the facility provides for continued agriculture, for agricultural lands, or the facility provides for ecological value, including habitat, for open space lands.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) This bill is the start of a conversation about how to reduce the land use pressures of clean energy siting in Eastern Washington. This is a large proposal with a lot of moving parts. The goal is to make it easier to site clean energy on rooftops, landfills, highways, and lower-impact locations. It supports distributed energy production, but also electric storage batteries and electric load shifting and demand response that can help achieve the state's clean energy goals. Distributed energy is more expensive than utility-scale, but has a host of other benefits, including lower environmental and community

impacts. State agencies have resources that can be repurposed for distributed energy production. Agrivoltaics is a way of siting solar facilities in agricultural areas that can support energy production and agriculture simultaneously, while sometimes even improving agricultural productivity of the land. Some of the alternative energy resources have more concerning potential environmental impacts than others, and the bill should instead focus on the distributed energy priorities that have lower impacts. The target for utilities to acquire a minimum amount of low-impact distributed energy will be an important driver of development of this type of energy infrastructure. San Juan County is trying to site a solar facility on its landfill, in order to allow for energy independence and to make the most use of limited available land.

(Opposed) Utilities are already deep into planning and implementation to achieve aggressive clean energy requirements under the CETA. Requiring distributed energy acquisition will make it more challenging and expensive to achieve the CETA requirements, and undercuts the central obligation for utilities to provide cost-effective and reliable energy. The 10 percent requirement, with strong penalties, for utilities to acquire distributed energy will increase ratepayer costs without achieving any benefits. Utilities should consider the benefits of distributed energy in planning for clean energy, but not be required to acquire a minimum and arbitrary percentage of distributed energy. Utilities are currently trying to deploy distributed energy where it is cost effective and makes sense, but distributed energy is more expensive and needs to be relied on thoughtfully. There are components of the proposal that are helpful to utilities, such as the SEPA exemption for projects unlikely to have significant environmental impacts, and requiring state agencies to make assets available for clean energy development. An interim conversation around this policy, and around the obligations of the CETA, is warranted.

(Other) Other policy mechanisms might be more effective at encouraging utilities to acquire distributed energy resources. The Department of Natural Resources has some concerns about how the obligations to develop resources, and the ambiguous language around it, could conflict with constitutional obligations with respect to its management of lands held in trust.

Persons Testifying: (In support) Representative Beth Doglio, prime sponsor; Bill Will, Washington Solar Energy Industries Association; Charlee Thompson, NW Energy Coalition; and Councilmember Justin Paulsen, San Juan County.

(Opposed) John Rothlin, Avista Corp; Brandon Houskeeper, Alliance of Western Energy Consumers; Joe Fernandi, Seattle City Light; Steve Taylor, Cowlitz County Public Utility District No. 1; and Matt Miller, Puget Sound Energy.

(Other) Erika Odem, Department of Natural Resources; and Jasmine Vasavada, Washington State Public Utility District Association.

Persons Signed In To Testify But Not Testifying: None.