HOUSE BILL REPORT
ESSB 5445

As Reported by House Committee On:
Environment & Energy

Title: An act relating to encouraging the development of distributed energy resources.

Brief Description: Encouraging the development of distributed energy resources.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Boehnke, Hasegawa and Slatter).

Brief History:
Committee Activity:
Environment & Energy: 3/20/25, 3/27/25 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Specifies the addition of an agrivoltaics facility to land classified as farm and agricultural land under the Open Space Taxation Act does not constitute a reclassification, withdrawal, or removal from farm and agricultural land classification and is not subject to additional tax.
- Creates a categorical exemption for certain distributed solar energy generation actions under the State Environmental Policy Act.
- Allows qualifying electric utilities to be in compliance with Energy Independence Act (EIA) targets through any combination of eligible renewable resources and certain accelerated conservation and demand response actions.
- Provides a quadruple multiplier towards EIA targets for the value of certain new distributed energy priority generation.

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: Do pass as amended. Signed by 21 members: Representatives Doglio, Chair; Hunt, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abbarno, Abell, Barnard, Berry, Duerr, Fey, Fitzgibbon, Kloba, Ley, Mena, Mendoza, Ramel, Stearns, Street, Stuebe, Wylie and Ybarra.

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 Open Space 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 Open Space 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.

Unless exempted, state law requires that legislation establishing a new tax preference must include a tax preference performance or legislative intent statement. Tax preferences also automatically expire 10 years from the effective date of the preference, unless otherwise specified. The Joint Legislative Audit and Review Committee periodically reviews the performance of tax preferences and determines whether the tax preference's state public policy objectives are being met.

Energy Independence Act.

The 2006 Energy Independence Act (EIA) requires an electric utility with more than 25,000 customers (qualifying utilities) to meet targets for energy conservation and to meet a certain percent of its annual load with eligible renewable resources. Eligible renewable resources include certain hydropower; biomass; water; wind; solar energy; geothermal; landfill gas; wave, ocean, or tidal power; gas from sewage treatment facilities; and biodiesel fuel.

Qualifying utilities must pursue all available conservation that is cost-effective, reliable, and feasible. Every two years, the qualifying utility must review and update an assessment of its achievable cost-effective conservation potential for the subsequent 10-year period. The qualifying utility must establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its 10-year assessment. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent 10-year period.

The EIA requires qualifying utilities to use eligible renewable resources or acquire equivalent renewable energy credits (RECs), or both, to meet the following targets:

- at least 3 percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
- at least 9 percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
- at least 15 percent of its load by January 1, 2020, and each year thereafter.

Beginning January 1, 2030, a qualifying utility is considered to be in compliance with this annual target if it uses electricity in an amount equal to 100 percent of the utility's annual retail electric load from eligible renewable resources under the EIA or nonemitting resources under the 2019 Clean Energy Transformation Act that do not produce greenhouse gas emissions. Towards these targets, a qualifying electric utility may count distributed generation from facilities with a capacity of 5 megawatts or less at double the facility's

electrical output if the utility owns or has contracted for the distributed generation and associated RECs or has contracted to purchase the associated RECs.

The Utilities and Transportation Commission determines compliance with the requirements of the EIA for investor-owned utilities. The State Auditor's Office is responsible for auditing compliance with the EIA for consumer-owned utilities, and the Office of the Attorney General is responsible for enforcing that compliance.

Summary of Amended Bill:

Distributed Energy Priorities.
Certain facilities and activities are determined to be distributed energy priorities (DEPs) for purposes of the Department of Commerce's state energy office, 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 and electric utility infrastructure sites;
    - 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 and electric utility infrastructure sites;
    - 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 DEPs, including that the facility must:

- be designed to be operated coincident with the continued productive agricultural use of the land, including for grazing, crop production, animal husbandry, and certain apiaries with pollinator habitat;
- 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;
- be constructed, installed, and operated to achieve integrated and simultaneous solar energy and marketable agricultural products as soon as agronomically feasible and optimal after the commercial solar operation date and continuing until decommissioning; and
- be designed and installed in a manner that supports the continuation of viable farm operation for the life of the array.

Open Space and Land Use Taxation Act Program.
Land on which a DEP agrivoltaics facility is located is considered farm and agricultural land for purposes of the Open Space Program. The addition of a DEP agrivoltaics facility to farm and agricultural land does not constitute a reclassification, withdrawal, or removal of lands under the Open Space Program, and thus does not require the payment of seven years of back taxes plus interest and a 20 percent penalty. These changes to the Open Space Program do not require the preparation of a tax preference performance statement and do not automatically expire after 10 years.

State Environmental Policy Act Exemption.
The following actions are categorically exempt from SEPA:

- the construction of structures that support solar energy panels or associated equipment on elevated structures located wholly over parking lots;
- the placement of solar panel arrays or the construction of solar panel structures with a footprint of less than 1,000 square feet, when located on previously disturbed or developed lands that are not eligible for current use classification under the Open Space Program as open space, farm and agricultural land, or timberland; and
- solar energy generation and accompanying storage and electricity transmission and distribution on closed or capped portions of landfills and reclaimed or former surface mine lands, when the facilities do not involve penetration of an asphalt or soil cap and are served by and accessible to emergency fire response services.

These SEPA categorical exemptions do not apply when the actions are undertaken on lands wholly or partly covered by water.

Energy Independence Act Target Compliance.

Qualifying utilities are considered in compliance with annual EIA renewable energy targets through the use of any combination of EIA eligible renewable resources and the following:

- certain accelerated conservation in excess of the qualifying utility's biennial acquisition target, measured based on the energy savings achieved through January 1, 2030; and
- demand response, which must be measured by a conversion methodology that includes determining the reduction in peak load in megawatts resulting from the demand response measure. Demand response may include energy storage that enables the utility to reduce peak system demand.

In addition to the EIA allowing a qualifying electric utility to count distributed generation from facilities with a capacity of 5 megawatts or less at double the facility's electrical output, for certain new distributed energy generation a qualifying electric utility may count the electrical output at four times the electrical output of the facility through 2029. In order for the new distributed energy to qualify for the quadruple multiplier through 2029 rather than the double multiplier, the distributed energy must:

- commence operation after the effective date of the act;
- be located within the geographical area where the utility provides service; and
- be a DEP.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment makes the following changes to the engrossed substitute senate bill:

- adds solar generation and accompanying energy storage, and electricity transmission and distribution located within the easement, right-of-way, or existing footprint of electric utility infrastructure sites as a DEP;
- amends the SEPA categorical exemption to apply to the placement of solar panel arrays or for the construction of structures that support solar panels with a footprint of less than 1,000 feet on previously disturbed or developed lands that are not in farm and agricultural land, timberland, or open space conservation status, and provides for this SEPA categorical exemption to apply only if there is one such structure per parcel;
- specifies that the changes to the treatment of agrivoltaics facilities under the Open Space Taxation Act are not subject to tax preference performance statement requirements and do not automatically expire after 10 years;
- increases, for purposes of achieving renewable energy targets under the EIA, the multiplier of the electrical output of certain distributed electrical generation facilities through 2029 from being a double multiplier to being a quadruple multiplier, but only for distributed energy generation that:
    - commences operation after the effective date of the act;
    - is located within the geographical area where the utility provides service; and
    - is a DEP;

- authorizes qualifying utilities to meet EIA renewable energy targets through any combination of eligible renewable resources, accelerated conservation in excess of the utility's biennial acquisition target measured based on the energy savings achieved through January 1, 2030, and demand response as measured using a specified methodology, and which includes energy storage that is a DEP when the energy storage enables the utility to reduce system peak demand; and
- amends the intent section.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) The transition to cleaner energy, coupled with new sources of electrical demand, is already straining electrical grids. Allowing local resilience investments to count towards EIA compliance would keep the economic value of investments local, while providing important system benefits. Public utility districts are currently spending tens of millions of dollars annually to purchase renewable energy credits. Largely from out-of-state projects, these renewable energy credits are purchased in order to comply with the EIA. Renewable energy credit purchases do not create the economic benefits of local infrastructure investments. Local investments in distributed energy like solar energy, battery systems, energy efficiency, hydrogen, and microgrids would improve electricity infrastructure and service delivery by electric utilities. Green and renewable hydrogen should be added as a category of DEPs. Allowing for investments in electric infrastructure capacity, such as storage and demand response, to count towards clean energy mandates helps fill a gap in existing state laws.

(Opposed) None.

(Other) The amendments to allow an alternative compliance pathway for electric utilities under the EIA have been heavily negotiated. The number of years for which the value of accelerated conservation may be counted towards EIA compliance should be limited.

Persons Testifying: (In support) Senator Matt Boehnke, prime sponsor; Andy Barth, Inland Power and Light; Liz Anderson, Washington Public Utility Districts Association; Sheila Corson, Mason County PUD No. 3; Ryan Collins, Snohomish PUD; Joel Hansen, AMERESCO; and Dave Warren, WA Green Hydrogen Alliance.

(Other) Charlee Thompson, NW Energy Coalition.

Persons Signed In To Testify But Not Testifying: None.