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HOUSE BILL 1046

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State of Washington

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2021 Regular Session

By Representatives Bateman and Duerr

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1 AN ACT Relating to community solar programs; amending RCW  
2 80.28.370 and 80.28.375; and adding a new section to chapter 80.28  
3 RCW.

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

5 **Sec. 1.** RCW 80.28.370 and 2017 3rd sp.s. c 36 s 10 are each  
6 amended to read as follows:

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

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

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

20 (2) "Community solar project manager" means the entity identified  
21 as having responsibility for managing the operation of a community

1 solar project and, if applicable, for maintaining contact with the  
2 investor-owned utility that procures electricity from the community  
3 solar project. A community solar project manager may be:

4 (a) An investor-owned utility; or

5 (b) An independent third party.

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

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

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

17 (6) "Low-income" has the same meaning as defined in RCW  
18 19.405.020.

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

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

31 ~~((+6))~~ (9) "Solar energy system" means any device or combination  
32 of devices or elements that rely upon direct sunlight as an energy  
33 source for use in the generation of electricity.

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

37 NEW SECTION. Sec. 2. A new section is added to chapter 80.28  
38 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

27 (iv) Protect the public interest.

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

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

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

35 (a) In this state; and

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

38 (4) (a) A community solar project manager may offer proportional  
39 ownership in or proportional participation in a community solar

1 project in any amount that does not exceed a potential project  
2 participant's average annual consumption of electricity.

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

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

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

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

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

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

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

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

37 (1) No community solar (~~company~~) project manager may engage in  
38 business in this state except in accordance with the provisions of  
39 this chapter. Engaging in business as a community solar company

1 includes advertising, soliciting, offering, or entering into an  
2 agreement to own a community solar project and provide community  
3 solar project services to electric utility customers.

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

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

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

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

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

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

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

24 (g) Disclosure of any pending litigation against it.

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

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

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

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

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

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

39 (5) The commission must take action to approve or issue a notice  
40 of hearing concerning any application for registration within thirty

1 days after receiving the application. The commission may approve an  
2 application with or without a hearing. The commission may deny an  
3 application after a hearing.

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

7 (7) The commission may adopt rules that describe the manner by  
8 which it will register a community solar ((~~company~~)) project manager,  
9 ensure that the terms and conditions of community solar projects or  
10 community solar project services comply with the requirements of  
11 chapter 36, Laws of 2017 3rd sp. sess., establish the community solar  
12 ((~~company's~~)) project manager's responsibilities for responding to  
13 customer complaints and disputes, and adopt annual reporting  
14 requirements. In addition to the application fee authorized under  
15 subsection (6) of this section, the commission may adopt regulatory  
16 fees applicable to community solar companies pursuant to RCW  
17 80.04.080, 80.24.010, and 80.24.020. Such fees may not exceed the  
18 cost of ensuring compliance with this chapter.

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

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

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

35 (11) A violation of this section constitutes an unfair or  
36 deceptive act in trade or commerce in violation of chapter 19.86 RCW,  
37 the consumer protection act. Acts in violation of chapter 36, Laws of  
38 2017 3rd sp. sess. are not reasonable in relation to the development  
39 and preservation of business, and constitute matters vitally

1 affecting the public interest for the purpose of applying the  
2 consumer protection act, chapter 19.86 RCW.

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

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