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**SENATE BILL 5714**

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**State of Washington****67th Legislature****2022 Regular Session****By** Senators Carlyle and Liias

Prefiled 01/06/22.

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) "Initiation of construction" has the same meaning as in RCW  
26 82.63.010.

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

30        (6) "Meaningful construction" means an active construction site,  
31 where excavation of a building site, laying of a structure  
32 foundation, or other tangible signs of construction are taking place  
33 and that clearly show a progression in the construction process at  
34 the location designated by the taxpayer in the application for  
35 deferral. Planning, permitting, or land clearing before excavation of  
36 the building site, without more, do not constitute "meaningful  
37 construction."

38        (7) "Nameplate capacity" means the full-load, sustained energy  
39 output of the solar canopy.

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

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

4       (10) "Qualifying commercial center" means a property currently  
5 used for retail, industrial, office, or other commercial purposes,  
6 containing a parking area or other area dedicated for the placement  
7 of a solar canopy.

8       (11) "Recipient" means a person receiving a tax deferral under  
9 this chapter.

10       (12) "Solar canopy" means an elevated structure, or multiple  
11 structures, containing a solar energy system, as defined in RCW  
12 82.16.110, that provides at least one megawatt of electricity.

13       NEW SECTION.   **Sec. 3.**   (1) Application for deferral of taxes  
14 under this chapter must be made before initiation of the construction  
15 of the investment project. The application must be made to the  
16 department in a form and manner prescribed by the department. The  
17 application must contain information regarding the location of the  
18 investment project, estimated or actual costs, time schedules for  
19 completion and operation, anticipated nameplate capacity and use of  
20 the electricity produced by the solar canopy, and other information  
21 required by the department. The department must rule on the  
22 application within 60 days. The department must compile this  
23 information for use by the joint legislative audit and review  
24 committee in its evaluation of the tax preference under section 7 of  
25 this act.

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

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

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

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

6       (3) A recipient of a deferral certificate under section 4 of this  
7 act must notify the department and update the information originally  
8 provided in the application if the solar canopy, at the time of  
9 completion, will produce an amount of electricity that is less than  
10 85 percent of the nameplate capacity originally assumed.

11       NEW SECTION.   **Sec. 6.**   (1) (a) Except as otherwise provided in  
12 this chapter, taxes deferred under this chapter need not be repaid.

13       (b) If the investment project is not operationally complete  
14 within two calendar years from the issuance of the tax deferral  
15 certificate, or if, on the basis of the tax performance report under  
16 RCW 82.32.534 or other information, the department finds that an  
17 investment project is used for purposes other than a qualified solar  
18 canopy at any time during the calendar year in which the investment  
19 project is certified by the department as having been operationally  
20 completed, or at any time during any of the seven succeeding calendar  
21 years, a portion of deferred taxes is immediately due according to  
22 the following schedule:

	Year in which use occurs	Percent of deferred taxes due
25	1	100
26	2	87.5
27	3	75
28	4	62.5
29	5	50
30	6	37.5
31	7	25
32	8	12.5

33       (2) The department must assess interest at the rate provided for  
34 delinquent taxes, but not penalties, retroactively to the date of  
35 deferral for a recipient who must repay deferred taxes under  
36 subsection (1) of this section because the department has found that

1 an investment project is not eligible for tax deferral. The debt for  
2 deferred taxes is not extinguished by insolvency or other failure of  
3 the recipient. Transfer of ownership does not terminate the deferral.  
4 The deferral is transferred, subject to the successor meeting the  
5 eligibility requirements of this chapter, for the remaining periods  
6 of the deferral.

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

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

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

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

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

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

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

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

37           (e) Any other metrics the committee finds relevant to the  
38 evaluation of the tax preference created in this act in meeting its  
39 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. 8.**   Sections 1 through 7, 9, and 10 of this  
8 act constitute a new chapter in Title 82 RCW.

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

11       NEW SECTION.   **Sec. 10.**   This act takes effect July 1, 2022.

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