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**SENATE BILL 5700**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senators Hargrove, Hatfield, Conway, and Warnick; by request of Office of Financial Management

Read first time 01/29/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to extending the expiration date of tax  
2 preferences for biofuel, biomass, and energy conservation; amending  
3 RCW 82.04.4334, 82.08.955, 82.12.955, 82.29A.135, 84.36.635,  
4 82.04.4494, and 82.04.310; creating new sections; providing an  
5 effective date; providing expiration dates; and declaring an  
6 emergency.

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

8 **PART I**  
9 **Biofuel Tax Incentives**

10 NEW SECTION. **Sec. 101.** It is the intent of the legislature to  
11 promote the use of alternative fuels and meet Washington state's  
12 commitment to its present and future generations to fully address the  
13 climate change challenge. This section is the tax preference  
14 performance statement for the tax preferences contained in sections  
15 102 through 106 of this act. This performance statement is only  
16 intended to be used for subsequent evaluation of the tax preference.  
17 It is not intended to create a private right of action by any party  
18 or be used to determine eligibility for preferential tax treatment.

1 (1) The legislature categorizes this tax preference as one  
2 intended to accomplish a general purpose as indicated in RCW  
3 82.32.808(2)(f).

4 (2) It is the legislature's specific public policy objective to  
5 promote the production and biofuels that can replace the use of  
6 fossil fuels to produce energy and thereby help with achieving the  
7 state's renewable energy and greenhouse gas emissions targets. It is  
8 also the legislature's specific public policy objective to create new  
9 markets for Washington oilseeds.

10 (3) To measure the effectiveness of the exemptions in sections  
11 102 through 106 of this act in achieving the public policy objectives  
12 described in subsection (2) of this section, the joint legislative  
13 audit and review committee must evaluate the number of biofuel plants  
14 operating in Washington state, the number of taxpayers that claim the  
15 preferences, the amount and type of preferences claimed, the amount  
16 of biodiesel or E85 motor fuel produced or manufactured in Washington  
17 state, and the number of acres of land used for oilseed production  
18 that is used to produce or manufacture biofuels. If a review finds  
19 that there is an increase in use of the tax preferences in sections  
20 102 through 106 of this act, then the legislature intends to extend  
21 the expiration date of the tax preferences.

22 (4) In order to obtain the data necessary to perform the review  
23 in subsection (3) of this section, the joint legislative audit and  
24 review committee may refer to data from the department of revenue,  
25 the Washington State University energy extension program, the  
26 Washington state department of agriculture, the federal energy  
27 information administration, and any other data source it deems  
28 necessary.

29 **Sec. 102.** RCW 82.04.4334 and 2007 c 309 s 3 are each amended to  
30 read as follows:

31 (1) In computing tax there may be deducted from the measure of  
32 tax amounts received from the retail sale, or for the distribution,  
33 of:

- 34 (a) Biodiesel fuel; or
- 35 (b) E85 motor fuel.

36 (2) For the purposes of this section and RCW 82.08.955 and  
37 82.12.955, the following definitions apply:

38 (a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty  
39 acids derived from vegetable oils or animal fats for use in

1 compression-ignition engines and that meets the requirements of the  
2 American society of testing and materials specification D 6751 in  
3 effect as of January 1, 2003.

4 (b) "E85 motor fuel" means an alternative fuel that is a blend of  
5 ethanol and hydrocarbon of which the ethanol portion is nominally  
6 seventy-five to eighty-five percent denatured fuel ethanol by volume  
7 that complies with the most recent version of American society of  
8 testing and materials specification D 5798.

9 (c) "Distribution" means any of the actions specified in RCW  
10 82.36.020(2).

11 (3) Every taxpayer claiming a deduction under this section must  
12 file a complete annual survey with the department under RCW  
13 82.32.585.

14 (4) This section expires July 1, ((2015)) 2025.

15 **Sec. 103.** RCW 82.08.955 and 2007 c 309 s 4 are each amended to  
16 read as follows:

17 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
18 machinery and equipment, or to services rendered in respect to  
19 constructing structures, installing, constructing, repairing,  
20 cleaning, decorating, altering, or improving of structures or  
21 machinery and equipment, or to sales of tangible personal property  
22 that becomes an ingredient or component of structures or machinery  
23 and equipment, if the machinery, equipment, or structure is used  
24 directly for the retail sale of a biodiesel blend or E85 motor fuel.  
25 Structures and machinery and equipment that are used for the retail  
26 sale of a biodiesel blend or E85 motor fuel and for other purposes  
27 are exempt only on the portion used directly for the retail sale of a  
28 biodiesel blend or E85 motor fuel.

29 (2) The tax levied by RCW 82.08.020 does not apply to sales of  
30 fuel delivery vehicles or to sales of or charges made for labor and  
31 services rendered in respect to installing, repairing, cleaning,  
32 altering, or improving the vehicles including repair parts and  
33 replacement parts if at least seventy-five percent of the fuel  
34 distributed by the vehicles is a biodiesel blend or E85 motor fuel.

35 (3) A person taking the exemption under this section must keep  
36 records necessary for the department to verify eligibility under this  
37 section. The exemption is available only when the buyer provides the  
38 seller with an exemption certificate in a form and manner prescribed

1 by the department. The seller shall retain a copy of the certificate  
2 for the seller's files.

3 (4) For the purposes of this section, the definitions in RCW  
4 82.04.4334 and this subsection apply.

5 (a) "Biodiesel blend" means fuel that contains at least twenty  
6 percent biodiesel fuel by volume.

7 (b) "E85 motor fuel" means an alternative fuel that is a blend of  
8 ethanol and hydrocarbon of which the ethanol portion is nominally  
9 seventy-five to eighty-five percent denatured fuel ethanol by volume  
10 that complies with the most recent version of American society of  
11 testing and materials specification D 5798.

12 (c) "Machinery and equipment" means industrial fixtures, devices,  
13 and support facilities and tangible personal property that becomes an  
14 ingredient or component thereof, including repair parts and  
15 replacement parts that are integral and necessary for the delivery of  
16 biodiesel blends or E85 motor fuel into the fuel tank of a motor  
17 vehicle.

18 (5) Every taxpayer claiming a deduction under this section must  
19 file a complete annual survey with the department under RCW  
20 82.32.585.

21 (6) This section expires July 1, (~~2015~~) 2025.

22 **Sec. 104.** RCW 82.12.955 and 2007 c 309 s 5 are each amended to  
23 read as follows:

24 (1) The provisions of this chapter do not apply in respect to the  
25 use of machinery and equipment, or to services rendered in respect to  
26 installing, repairing, cleaning, altering, or improving of eligible  
27 machinery and equipment, or tangible personal property that becomes  
28 an ingredient or component of machinery and equipment used directly  
29 for the retail sale of a biodiesel or E85 motor fuel.

30 (2) The provisions of this chapter do not apply in respect to the  
31 use of fuel delivery vehicles including repair parts and replacement  
32 parts and to services rendered in respect to installing, repairing,  
33 cleaning, altering, or improving the vehicles if at least seventy-  
34 five percent of the fuel distributed by the vehicles is a biodiesel  
35 or E85 motor fuel.

36 (3) For the purposes of this section, the definitions in RCW  
37 82.04.4334 and 82.08.955 apply.

1       (4) Every taxpayer claiming a deduction under this section must  
2 file a complete annual survey with the department under RCW  
3 82.32.585.

4       (5) This section expires July 1, ((2015)) 2025.

5       **Sec. 105.** RCW 82.29A.135 and 2010 1st sp.s. c 11 s 6 are each  
6 amended to read as follows:

7       (1) ~~((For the purposes of this section:))~~ The definitions in this  
8 subsection apply throughout this section unless the context clearly  
9 requires otherwise.

10       (a) "Alcohol fuel" means any alcohol made from a product other  
11 than petroleum or natural gas, which is used alone or in combination  
12 with gasoline or other petroleum products for use as a fuel for motor  
13 vehicles, farm implements, and machines or implements of husbandry.

14       (b) "Anaerobic digester" has the same meaning as provided in RCW  
15 82.08.900.

16       (c) "Biodiesel feedstock" means oil that is produced from an  
17 agricultural crop for the sole purpose of ultimately producing  
18 biodiesel fuel.

19       (d) "Biodiesel fuel" means a mono alkyl ester of long chain fatty  
20 acids derived from vegetable oils or animal fats for use in  
21 compression-ignition engines and that meets the requirements of the  
22 American society of testing and materials specification D 6751 in  
23 effect as of January 1, 2003.

24       (e) "Wood biomass fuel" means a pyrolytic liquid fuel or  
25 synthesis gas-derived liquid fuel, used in internal combustion  
26 engines, and produced from wood, forest, or field residue, or  
27 dedicated energy crops that do not include wood pieces that have been  
28 treated with chemical preservatives such as creosote,  
29 pentachlorophenol, or copper-chrome-arsenic.

30       (2)(a) All leasehold interests in buildings, machinery,  
31 equipment, and other personal property which are used primarily for  
32 the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel,  
33 biodiesel feedstock, or the operation of an anaerobic digester, the  
34 land upon which this property is located, and land that is reasonably  
35 necessary in the manufacturing of alcohol fuel, wood biomass fuel,  
36 biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic  
37 digester, but not land necessary for growing of crops, which together  
38 comprise a new manufacturing facility or an addition to an existing  
39 manufacturing facility, are exempt from leasehold taxes for a period

1 of six years from the date on which the facility or the addition to  
2 the existing facility becomes operational.

3 (b) For manufacturing facilities which produce products in  
4 addition to alcohol fuel, wood biomass fuel, biodiesel fuel, or  
5 biodiesel feedstock, the amount of the leasehold tax exemption is  
6 based upon the annual percentage of the total value of all products  
7 manufactured that is the value of the alcohol fuel, wood biomass  
8 fuel, biodiesel fuel, and biodiesel feedstock manufactured.

9 (3) Claims for exemptions authorized by this section must be  
10 filed with the department (~~of revenue~~) on forms prescribed by the  
11 department (~~of revenue~~) and furnished by the department (~~of  
12 revenue~~). Once filed, the exemption is valid for six years and may  
13 not be renewed. The department (~~of revenue~~) must verify and approve  
14 claims as the department (~~of revenue~~) determines to be justified  
15 and in accordance with this section. No claims may be filed after  
16 December 31, (~~2015~~) 2025, except for claims for anaerobic  
17 digesters, which may be filed no later than December 31, 2012.

18 (4) The department (~~of revenue~~) may promulgate (~~such~~) rules,  
19 pursuant to chapter 34.05 RCW, as are necessary to properly  
20 administer this section.

21 **Sec. 106.** RCW 84.36.635 and 2010 1st sp.s. c 11 s 4 are each  
22 amended to read as follows:

23 (1) (~~For the purposes of this section:~~) The definitions in this  
24 subsection apply throughout this section unless the context clearly  
25 requires otherwise.

26 (a) "Alcohol fuel" means any alcohol made from a product other  
27 than petroleum or natural gas, which is used alone or in combination  
28 with gasoline or other petroleum products for use as a fuel for motor  
29 vehicles, farm implements, and machines or implements of husbandry.

30 (b) "Anaerobic digester" has the same meaning as provided in RCW  
31 82.08.900.

32 (c) "Biodiesel feedstock" means oil that is produced from an  
33 agricultural crop for the sole purpose of ultimately producing  
34 biodiesel fuel.

35 (d) "Biodiesel fuel" means a mono alkyl ester of long chain fatty  
36 acids derived from vegetable oils or animal fats for use in  
37 compression-ignition engines and that meets the requirements of the  
38 American society of testing and materials specification D 6751 in  
39 effect as of January 1, 2003.

1 (2)(a) All buildings, machinery, equipment, and other personal  
2 property which are used primarily for the manufacturing of alcohol  
3 fuel, biodiesel fuel, biodiesel feedstock, or the operation of an  
4 anaerobic digester, the land upon which this property is located, and  
5 land that is reasonably necessary in the manufacturing of alcohol  
6 fuel, biodiesel fuel, biodiesel feedstock, or the operation of an  
7 anaerobic digester, but not land necessary for growing of crops,  
8 which together comprise a new manufacturing facility or an addition  
9 to an existing manufacturing facility, are exempt from property  
10 taxation for the six assessment years following the date on which the  
11 facility or the addition to the existing facility becomes  
12 operational.

13 (b) For manufacturing facilities which produce products in  
14 addition to alcohol fuel, biodiesel fuel, or biodiesel feedstock, the  
15 amount of the property tax exemption is based upon the annual  
16 percentage of the total value of all products manufactured that is  
17 the value of the alcohol fuel, biodiesel fuel, and biodiesel  
18 feedstock manufactured.

19 (3) Claims for exemptions authorized by this section must be  
20 filed with the county assessor on forms prescribed by the department  
21 (~~of revenue~~) and furnished by the assessor. Once filed, the  
22 exemption is valid for six years and may not be renewed. The assessor  
23 must verify and approve claims as the assessor determines to be  
24 justified and in accordance with this section. No claims may be filed  
25 after December 31, (~~2015~~) 2025, except for claims for anaerobic  
26 digesters, which may be filed no later than December 31, 2012.

27 (4) The department (~~of revenue~~) may promulgate (~~such~~) rules,  
28 pursuant to chapter 34.05 RCW, as necessary to properly administer  
29 this section.

30  
31

## PART II

### Biomass Tax Incentives

32 NEW SECTION. **Sec. 201.** It is the intent of the legislature to  
33 utilize Washington's abundant forest resources to promote diversified  
34 renewable energy use, and to promote healthy, fire resistant forests  
35 in the state. This section is the tax preference performance  
36 statement for the tax preference contained in RCW 82.04.4494. This  
37 performance statement is only intended to be used for subsequent  
38 evaluation of the tax preference. It is not intended to create a

1 private right of action by any party or be used to determine  
2 eligibility for preferential tax treatment.

3 (1) The legislature categorizes this tax preference as one  
4 intended to induce certain designated behavior by taxpayers, as  
5 indicated in RCW 82.32.808(2)(a).

6 (2) It is the legislature's specific public policy objective to  
7 promote the production of steam, heat, electricity, or biofuel using  
8 forest derived biomass that is renewable and has been deemed carbon  
9 neutral under RCW 70.235.020(3), and can thereby replace the use of  
10 fossil fuel to produce energy and thereby help with achieving the  
11 state's renewable energy and greenhouse gas emissions targets;  
12 further, the use of forest derived biomass used to produce energy  
13 will help defray the cost of forest thinning thereby improving forest  
14 health and reducing the threat of wildfires. It is the legislature's  
15 intent to provide a forest derived biomass credit in order to  
16 encourage the harvesting, collection, and utilization of the more  
17 than eleven million tons of forest derived biomass available  
18 annually, thereby producing renewable, carbon neutral energy, thereby  
19 helping the state achieve its renewable energy targets, its  
20 greenhouse gas emissions targets, improve forest health and reduce  
21 the threat of wildfires.

22 (3) If a review finds that the amount of forest derived biomass  
23 collected and utilized to produce energy between July 1, 2015, and  
24 June 30, 2024, increases by at least an average annual rate of ten  
25 percent per year, then the legislature intends to extend the  
26 expiration date of the tax preference.

27 (4) In order to obtain the data necessary to perform the review  
28 in subsection (3) of this section, the joint legislative audit and  
29 review committee may refer to the total green tons of forest derived  
30 biomass harvested data available from the department of revenue and  
31 any other data source it deems necessary.

32 **Sec. 202.** RCW 82.04.4494 and 2009 c 469 s 401 are each amended  
33 to read as follows:

34 (1) In computing the tax imposed under this chapter, harvesters  
35 are allowed a credit against the amount of tax otherwise due under  
36 this chapter, as provided in this section. The credit per harvested  
37 green ton of forest derived biomass sold, transferred, or used for  
38 production of electricity, steam, heat, or biofuel is ~~((as follows:~~



1 ~~(a) For forest derived biomass harvested October 1, 2009, through~~  
2 ~~June 30, 2010, zero dollars;~~

3 ~~(b) For forest derived biomass harvested July 1, 2010, through~~  
4 ~~June 30, 2013, three dollars;~~

5 ~~(c) For forest derived biomass harvested July 1, 2013, through~~  
6 ~~June 30, 2015,)) five dollars.~~

7 (2) Credit may not be claimed for forest derived biomass sold,  
8 transferred, or used before July 1, 2009. The amount of credit  
9 allowed for a reporting period may not exceed the tax otherwise due  
10 under this chapter for that reporting period. Any unused excess  
11 credit in a reporting period may be carried forward to future  
12 reporting periods for a maximum of two years.

13 (3) For the purposes of this section, "harvested" and  
14 "harvesters" are defined in RCW 84.33.035, and "biofuel" is defined  
15 in RCW 43.325.010.

16 (4) Every taxpayer claiming a deduction under this section must  
17 file a complete annual survey with the department under RCW  
18 82.32.585.

19 (5) This section expires June 30, ((2015)) 2025.

### 20 PART III

#### 21 Energy Conservation Payments from Bonneville Power Administration

22 NEW SECTION. **Sec. 301.** This section is the tax preference  
23 performance statement for the tax preference contained in section 302  
24 of this act. The performance statement is only intended to be used  
25 for subsequent evaluation of the tax preference. It is not intended  
26 to create a private right of action by any party or be used to  
27 determine eligibility for preferential tax treatment.

28 (1) The legislature categorizes this tax preference as one  
29 intended to induce certain designated behavior by taxpayers, as  
30 indicated in RCW 82.32.808(2)(a).

31 (2) It is the legislature's specific public policy objective to  
32 increase investment in energy efficiency and conservation programs,  
33 and to support efforts by utilities to acquire all cost-effective  
34 energy conservation as required under state law. To support this  
35 objective, it is the legislature's intent to extend the expiration  
36 date of the exemption from business and occupation tax amounts  
37 received by utilities in the form of credits against power contracts  
38 or received from the Bonneville power administration for energy

1 conservation purposes, thereby inducing utilities to invest funds in  
2 energy conservation and efficiency programs, thereby reducing the  
3 amount of electric energy that such utilities must either generate or  
4 purchase, thereby reducing energy costs to utilities and customers.

5 (3) To measure the effectiveness of the exemption in section 302  
6 of this act in achieving the public policy objectives described in  
7 subsection (2) of this section, the joint legislative audit and  
8 review committee must evaluate the number of taxpayers that claim the  
9 exemption and the amount of investment made by utilities in energy  
10 conservation and efficiency programs.

11 (4) The joint legislative audit and review committee may use data  
12 from the department of revenue, the utilities and transportation  
13 commission, and any other data it deems necessary in performing the  
14 evaluation under subsection (3) of this section.

15 **Sec. 302.** RCW 82.04.310 and 2014 c 216 s 302 are each amended to  
16 read as follows:

17 (1) This chapter does not apply to any person in respect to a  
18 business activity with respect to which tax liability is specifically  
19 imposed under the provisions of chapter 82.16 RCW including amounts  
20 derived from activities for which a deduction is allowed under RCW  
21 82.16.050. The exemption in this subsection does not apply to sales  
22 of natural gas, including compressed natural gas and liquefied  
23 natural gas, by a gas distribution business, if such sales are exempt  
24 from the tax imposed under chapter 82.16 RCW as provided in RCW  
25 82.16.310.

26 (2) This chapter does not apply to amounts received by any person  
27 for the sale of electrical energy for resale within or outside the  
28 state.

29 (3)(a) This chapter does not apply to amounts received by any  
30 person for the sale of natural or manufactured gas in a calendar year  
31 if that person sells within the United States a total amount of  
32 natural or manufactured gas in that calendar year that is no more  
33 than twenty percent of the amount of natural or manufactured gas that  
34 it consumes within the United States in the same calendar year.

35 (b) For purposes of determining whether a person has sold within  
36 the United States a total amount of natural or manufactured gas in a  
37 calendar year that is no more than twenty percent of the amount of  
38 natural or manufactured gas that it consumes within the United States

1 in the same calendar year, the following transfers of gas are not  
2 considered to be the sale of natural or manufactured gas:

3 (i) The transfer of any natural or manufactured gas as a result  
4 of the acquisition of another business, through merger or otherwise;  
5 or

6 (ii) The transfer of any natural or manufactured gas accomplished  
7 solely to comply with federal regulatory requirements imposed on the  
8 pipeline transportation of such gas when it is shipped by a third-  
9 party manager of a person's pipeline transportation.

10 (4) Until July 1, 2025, this chapter does not apply to amounts  
11 received by any person in the form of credits against power contracts  
12 with the Bonneville power administration, or funds provided by the  
13 Bonneville power administration, for the purpose of implementing  
14 energy conservation programs or demand-side management programs.

15 **PART IV**

16 **Miscellaneous Provisions**

17 NEW SECTION. **Sec. 401.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of  
19 the state government and its existing public institutions, and takes  
20 effect July 1, 2015.

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