

**2SSB 5116 - S AMD 109**

By Senator Braun

**NOT ADOPTED 02/28/2019**

1 Beginning on page 32, line 1, strike all of sections 17 through  
2 19 and insert the following:

3 "NEW SECTION. **Sec. 17.** This section is the tax preference  
4 performance statement for the tax preferences contained in sections  
5 18 and 19, chapter . . ., Laws of 2019 (sections 18 and 19 of this  
6 act). This performance statement is only intended to be used for  
7 subsequent evaluation of the tax preference. It is not intended to  
8 create a private right of action by any party or be used to determine  
9 eligibility for preferential tax treatment.

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

13 (2) It is the legislature's specific public policy objective to  
14 reduce the amount of carbon dioxide emissions in Washington. It is  
15 the legislature's intent to extend the expiration date of the  
16 existing sales and use tax exemption for machinery and equipment used  
17 directly in generating certain types of alternative energy, in order  
18 to reduce the price charged to customers for that machinery and  
19 equipment, thereby inducing some customers to buy machinery and  
20 equipment for alternative energy when they might not otherwise,  
21 thereby displacing electricity from fossil-fueled generating  
22 resources, thereby reducing the amount of carbon dioxide emissions in  
23 Washington.

24 (3) The joint legislative audit and review committee is not  
25 required to perform a tax preference review under chapter 43.136 RCW  
26 for the tax preferences contained in sections 18 and 19,  
27 chapter . . ., Laws of 2019 (sections 18 and 19 of this act) and it  
28 is the intent of the legislature to allow the tax preferences to  
29 expire upon their scheduled expiration dates.

30 **Sec. 18.** RCW 82.08.962 and 2018 c 164 s 5 are each amended to  
31 read as follows:

1           (1) (a) (~~Except as provided in RCW 82.08.963,~~) Purchasers who  
2 have paid the tax imposed by RCW 82.08.020 on machinery and equipment  
3 used directly in generating electricity using fuel cells, wind, sun,  
4 biomass energy, tidal or wave energy, geothermal resources, or  
5 technology that converts otherwise lost energy from exhaust, as the  
6 principal source of power, or to sales of or charges made for labor  
7 and services rendered in respect to installing such machinery and  
8 equipment, are eligible for an exemption as provided in this section,  
9 but only if the purchaser develops with such machinery, equipment,  
10 and labor a facility capable of generating not less than one thousand  
11 watts of electricity.

12           (b) Beginning on July 1, 2011, through January 1, (~~2020~~) 2030,  
13 the amount of the exemption under this subsection (1) is equal to  
14 seventy-five percent of the state and local sales tax paid. The  
15 purchaser is eligible for an exemption under this subsection (1)(b)  
16 in the form of a remittance.

17           (2) For purposes of this section and RCW 82.12.962, the following  
18 definitions apply:

19           (a) "Biomass energy" includes: (i) By-products of pulping and  
20 wood manufacturing process; (ii) animal waste; (iii) solid organic  
21 fuels from wood; (iv) forest or field residues; (v) wooden demolition  
22 or construction debris; (vi) food waste; (vii) liquors derived from  
23 algae and other sources; (viii) dedicated energy crops; (ix)  
24 biosolids; and (x) yard waste. "Biomass energy" does not include wood  
25 pieces that have been treated with chemical preservatives such as  
26 creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old  
27 growth forests; or municipal solid waste.

28           (b) "Fuel cell" means an electrochemical reaction that generates  
29 electricity by combining atoms of hydrogen and oxygen in the presence  
30 of a catalyst.

31           (c) (i) "Machinery and equipment" means fixtures, devices, and  
32 support facilities that are integral and necessary to the generation  
33 of electricity using fuel cells, wind, sun, biomass energy, tidal or  
34 wave energy, geothermal resources, or technology that converts  
35 otherwise lost energy from exhaust.

36           (ii) "Machinery and equipment" does not include: (A) Hand-powered  
37 tools; (B) property with a useful life of less than one year; (C)  
38 repair parts required to restore machinery and equipment to normal  
39 working order; (D) replacement parts that do not increase  
40 productivity, improve efficiency, or extend the useful life of

1 machinery and equipment; (E) buildings; or (F) building fixtures that  
2 are not integral and necessary to the generation of electricity that  
3 are permanently affixed to and become a physical part of a building.

4 (3) (a) Machinery and equipment is "used directly" in generating  
5 electricity by wind energy, solar energy, biomass energy, tidal or  
6 wave energy, geothermal resources, or technology that converts  
7 otherwise lost energy from exhaust if it provides any part of the  
8 process that captures the energy of the wind, sun, biomass energy,  
9 tidal or wave energy, geothermal resources, or technology that  
10 converts otherwise lost energy from exhaust, converts that energy to  
11 electricity, and stores, transforms, or transmits that electricity  
12 for entry into or operation in parallel with electric transmission  
13 and distribution systems.

14 (b) Machinery and equipment is "used directly" in generating  
15 electricity by fuel cells if it provides any part of the process that  
16 captures the energy of the fuel, converts that energy to electricity,  
17 and stores, transforms, or transmits that electricity for entry into  
18 or operation in parallel with electric transmission and distribution  
19 systems.

20 (4) (a) A purchaser claiming an exemption in the form of a  
21 remittance under subsection (1) (b) of this section must pay the tax  
22 imposed by RCW 82.08.020 and all applicable local sales taxes imposed  
23 under the authority of chapters 82.14 and 81.104 RCW. The purchaser  
24 may then apply to the department for remittance in a form and manner  
25 prescribed by the department. A purchaser may not apply for a  
26 remittance under this section more frequently than once per quarter.  
27 The purchaser must specify the amount of exempted tax claimed and the  
28 qualifying purchases for which the exemption is claimed. The  
29 purchaser must retain, in adequate detail, records to enable the  
30 department to determine whether the purchaser is entitled to an  
31 exemption under this section, including: Invoices; proof of tax paid;  
32 and documents describing the machinery and equipment.

33 (b) The department must determine eligibility under this section  
34 based on the information provided by the purchaser, which is subject  
35 to audit verification by the department. The department must on a  
36 quarterly basis remit exempted amounts to qualifying purchasers who  
37 submitted applications during the previous quarter.

38 (5) The exemption provided by this section expires September 30,  
39 2017, as it applies to: (a) Machinery and equipment that is used  
40 directly in the generation of electricity using solar energy and

1 capable of generating no more than five hundred kilowatts of  
2 electricity; or (b) sales of or charges made for labor and services  
3 rendered in respect to installing such machinery and equipment.

4 (6) This section expires January 1, (~~(2020)~~) 2030.

5 **Sec. 19.** RCW 82.12.962 and 2018 c 164 s 7 are each amended to  
6 read as follows:

7 (1) (a) (~~(Except as provided in RCW 82.12.963,)~~) Consumers who  
8 have paid the tax imposed by RCW 82.12.020 on machinery and equipment  
9 used directly in generating electricity using fuel cells, wind, sun,  
10 biomass energy, tidal or wave energy, geothermal resources, or  
11 technology that converts otherwise lost energy from exhaust, or to  
12 sales of or charges made for labor and services rendered in respect  
13 to installing such machinery and equipment, are eligible for an  
14 exemption as provided in this section, but only if the purchaser  
15 develops with such machinery, equipment, and labor a facility capable  
16 of generating not less than one thousand watts of electricity.

17 (b) Beginning on July 1, 2011, through January 1, (~~(2020)~~) 2030,  
18 the amount of the exemption under this subsection (1) is equal to  
19 seventy-five percent of the state and local sales tax paid. The  
20 consumer is eligible for an exemption under this subsection (1)(b) in  
21 the form of a remittance.

22 (2) (a) A person claiming an exemption in the form of a remittance  
23 under subsection (1)(b) of this section must pay the tax imposed by  
24 RCW 82.12.020 and all applicable local use taxes imposed under the  
25 authority of chapters 82.14 and 81.104 RCW. The consumer may then  
26 apply to the department for remittance in a form and manner  
27 prescribed by the department. A consumer may not apply for a  
28 remittance under this section more frequently than once per quarter.  
29 The consumer must specify the amount of exempted tax claimed and the  
30 qualifying purchases or acquisitions for which the exemption is  
31 claimed. The consumer must retain, in adequate detail, records to  
32 enable the department to determine whether the consumer is entitled  
33 to an exemption under this section, including: Invoices; proof of tax  
34 paid; and documents describing the machinery and equipment.

35 (b) The department must determine eligibility under this section  
36 based on the information provided by the consumer, which is subject  
37 to audit verification by the department. The department must on a  
38 quarterly basis remit exempted amounts to qualifying consumers who  
39 submitted applications during the previous quarter.

1 (3) Purchases exempt under RCW 82.08.962 are also exempt from the  
2 tax imposed under RCW 82.12.020.

3 (4) The definitions in RCW 82.08.962 apply to this section.

4 (5) The exemption provided in subsection (1) of this section does  
5 not apply:

6 (a) To machinery and equipment used directly in the generation of  
7 electricity using solar energy and capable of generating no more than  
8 five hundred kilowatts of electricity, or to sales of or charges made  
9 for labor and services rendered in respect to installing such  
10 machinery and equipment, when first use within this state of such  
11 machinery and equipment, or labor and services, occurs after  
12 September 30, 2017; and

13 (b) To any other machinery and equipment described in subsection  
14 (1)(a) of this section, or to sales of or charges made for labor and  
15 services rendered in respect to installing such machinery or  
16 equipment, when first use within this state of such machinery and  
17 equipment, or labor and services, occurs after December 31, ((2019))  
18 2029.

19 (6) This section expires January 1, ((2020)) 2030."

EFFECT: Removes the tiered tax remittance rates for using various  
labor standards on clean energy projects.

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