

# SENATE BILL REPORT

## ESSB 5447

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As Amended by House, April 14, 2023

**Title:** An act relating to promoting the alternative jet fuel industry in Washington.

**Brief Description:** Promoting the alternative jet fuel industry in Washington.

**Sponsors:** Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Billig, King, Nguyen, MacEwen, Mullet, Wellman, Gildon, Keiser, Shewmake, Lovick, Boehnke, Warnick, Randall, Conway, Dhingra, Dozier, Liias, Lovelett, Saldaña, Stanford, Van De Wege and Wagoner).

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 2/01/23, 2/07/23 [DPS-WM].  
Ways & Means: 2/20/23, 2/24/23 [DPS (ENET), DNP, w/oRec].

**Floor Activity:** Passed Senate: 3/1/23, 46-2.  
Passed House: 4/14/23, 96-0.

**Brief Summary of Engrossed First Substitute Bill**

- Requires Ecology to allow one or more carbon intensity pathways for alternative jet fuel by no later than December 31, 2023.
- Codifies the Alternative Jet Fuels Work Group.
- Creates a preferential business and operations (B&O) tax rate of 0.275 percent for the manufacturing and wholesaling of alternative jet fuels.
- Establishes a B&O and public utilities tax credit for certain sales and purchases of alternative jet fuel.
- Specifies the tax incentives take effect July 1, 2024, begin upon notification of one or more facilities operating in this state with cumulative production capacity of at least 20 million gallons of alternative jet fuel per year, and are effective for a period of ten years.

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*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.*

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 5447 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

**Staff:** Angela Kleis (786-7469)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5447 as recommended by Committee on Environment, Energy & Technology be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Torres, Van De Wege, Wagoner and Wellman.

**Minority Report:** Do not pass.

Signed by Senator Schoesler, Ranking Member, Capital.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Hasegawa and Saldaña.

**Staff:** Alia Kennedy (786-7405)

**Background:** Work Group Report. In 2021, the Legislature reestablished the Sustainable Aviation Biofuels Work Group. It was convened by the Washington State University Office of Clean Technology, now the Office of National Laboratory Partnerships, and provided a report, including pertinent recommendations, to the Governor and Legislature on December 1, 2022.

Clean Fuels Program. The Legislature enacted the Clean Fuels Program in 2021 and directed the Department of Ecology (Ecology) to implement the program no later than January 1, 2023. The rules adopted must reduce greenhouse gas emissions attributable to each unit of the fuels to 20 percent below 2017 levels by 2038, based on a statutory schedule. Transportation fuels exported from the state are not subject to the greenhouse gas emissions reduction requirements of the program.

Statewide Office of Renewable Fuels. In 2022, the Statewide Office of Renewable Fuels (office) was established within the Department of Commerce to leverage, support, and integrate with other state agencies to carry out specified statutory duties such as driving job creation, improving economic vitality, and supporting the transition to clean energy. The

office must meet specified requirements such as coordinating with certain entities and assessing opportunities for and barriers to deployment of renewable fuels and green electrolytic hydrogen in hard to decarbonize sectors of the state economy.

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent—businesses with taxable income of less than \$1 million—and 1.75 percent—businesses with taxable income of \$1 million or more—for services and activities not classified elsewhere. Several preferential rates also apply to specific business activities.

Tax Preferences. State law provides for a range of tax preferences that confer reduced tax liability for a designated class of taxpayer. Tax preferences include tax credits, deductions, exemptions, preferential tax rates, and deferrals. Washington has over 700 tax preferences. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Climate Commitment Account. The Climate Commitment Account is an account created as part of the state's cap and invest program. The account receives distributions from auction revenues under the cap and invest program and revenues may go towards implementing the working families tax credit and environmental and clean energy programs, activities, or projects.

**Summary of Engrossed First Substitute Bill: Carbon Intensity Pathways.** By no later than December 31, 2023, Ecology must allow one or more carbon intensity pathways for alternative jet fuel. Ecology must:

- allow biomethane to be claimed as feedstock for renewable diesel and alternative jet fuel consistent with that allowable for compressed natural gas, liquified natural gas, liquified compressed natural gas, or hydrogen production; and
- notify the Department of Revenue (DOR) within 30 days when one or more facilities capable of producing a cumulative production capacity of at least 20,000,000 gallons of alternative jet fuel each year are operating in this state.

Work Group. The Washington State University must convene an Alternative Jet Fuels Work Group (work group) to further the development of alternative jet fuels as a productive industry in the state. Membership includes legislators and sectors involved in alternative jet fuel research, development, production, and utilization. The work group must provide a report including pertinent recommendations to the Governor and the appropriate committees

of the Legislature by December 1, 2024, and December 1st of every even-numbered year until December 1, 2028. The work group expires January 1, 2029.

Statewide Office of Renewable Fuels. In addition to current statutory purposes, the office must further the development and use of alternative jet fuels as a productive industry in the state. In carrying out its duties, the office must also consider alternative jet fuels, review certain tax and regulatory incentives, and collaborate with the work group.

Report. By December 1, 2024, and each December 1st of each year until JLARC completes its report on the tax preferences established in this act, the Washington State University, in collaboration with the University of Washington's Department of Environmental and Occupational Health, must calculate emissions of ultrafine and fine particulate matter and sulfur oxides in communities surrounding an international airport owned by a port district in a county with a population greater than 1,500,000 and report specified information to JLARC.

Tax Incentives. The manufacturing and wholesaling of alternative jet fuel is subject to a preferential B&O tax rate of 0.275 percent. The preferential tax rate begins after DOR receives notification from Ecology that there are one or more facilities operating in this state with a cumulative production capacity of at least 20,000,000 gallons of alternative jet fuel per year . The preferential tax rate lasts for ten years.

A B&O and public utilities tax (PUT) credit is available for certain sales and purchases of alternative jet fuel. The amount of the credit is one dollar per gallon of alternative jet fuel that has at least 50 percent less carbon dioxide equivalent emissions than conventional jet fuel. The credit amount increases by \$0.02 for each additional 1 percent reduction in carbon dioxide equivalent emissions beyond 50 percent. The credit may not exceed \$2 per gallon of alternative jet fuel.

Eligibility for the credit for sales of alternative jet fuel is limited to businesses located in a qualifying county or a businesses' designated alternative jet fuel blender located in Washington. Qualifying county is a county that has a population less than 650,000.

Credits may only be earned on purchases of alternative jet fuel for flights departing in Washington.

Contract pricing for sales of alternative jet fuel between a person claiming the credit and the final consumer must be adjusted to reflect the per gallon credit.

The credit is calculated only on the portion of jet fuel that is considered alternative jet fuel and does not include conventional jet fuel when the fuels are blended or used in a jet fuel mixture.

Credits against the B&O tax for sales of alternative jet fuel may only be claimed on alternative jet fuel manufacturing and wholesaling activities that would otherwise qualifying

for the new preferential B&O tax rate. Credits earned against the B&O or public utility tax for purchases of alternative fuel may be claimed against any B&O tax liability.

Credits may not be earned until DOR receives notification from Ecology that there are one or more facilities operating in this state with a cumulative production capacity of at least 20,000,000 gallons of alternative jet fuel per year. Credits may be earned for ten years. A credit earned during one calendar year may be carried over and claimed against taxes incurred for the next subsequent year but may not be carried over for any calendar year thereafter.

The preferential tax rate and tax credits are subject to review by JLARC. The automatic ten-year expiration for tax preferences does not apply to this act.

The state treasurer may, subject to appropriations for this specific purpose, transfer from the Climate Commitment Account to the State General Fund an amount equal to any reduction in state revenue from the preferential B&O tax rate and the B&O and PUT credits for the prior calendar year, as annually determined by DOR.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: These policies have been worked on for over a decade and was developed by bringing together stakeholders to discuss how to move Washington forward in the sustainable aviation fuels industry. Washington has unique attributes to be a leader in this sector. We are home to large businesses that use sustainable aviation fuels, to the major feedstocks used in the development of sustainable aviation fuels, and to academic leaders in sustainable aviation fuels research. However, the state is not leading in this industry because we do not have a production facility. This bill helps make the promise of a green economy and a healthier planet a reality. We are working on a proposed substitute to address concerns regarding the Clean Fuels Program.

International and national companies are prepared to invest millions of dollars in this industry and would like to build in Washington.

The aviation jet fuels sector is the hardest to decarbonize; however, it is critical in order for the state to reach its climate policy goals. This bill enhances Washington's commitment to

achieving those goals by providing incentives which help get the industry off the ground in Washington and signal to suppliers and producers that the state wants aviation jet fuels used and produced in the state. The tax preferences and credits are crucial and must be tied to the carbon intensity of fuel. Section 4 of the bill is crucial. The funding source is appropriate.

Aviation jet fuel is expensive and disincentivized under current policies. The incentives in the bill are needed to promote production. This bill will allow purchasers to go bigger and faster, reduce barriers to production, create jobs, develop the economy, and benefit our communities.

It is important to continue the work group because it is a magnificent venue to discuss this industry. We are looking forward to continuing this work. Washington is the hub for research development in this industry.

CON: This is an industry development bill not a climate bill. This bill has climate justice problems and impedes real solutions. The bill uses Climate Commitment Act funds but jet fuels are exempt under that act. This bill incentivizes airlines to continue to pollute.

OTHER: We support the goals of the bill and believe the incentives are thoughtful. However, we have concerns with modifying the Clean Fuel Program because it legislatively sets a higher incentive over other fuel types currently included in the program.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Andy Billig, Prime Sponsor; Donny Donovan, IAM 751; Darrin Morgan, SkyNRG; Derek Phelps, Twelve; Peter Dahling, Neste USA, Inc.; Tom Wolf, bp America; Andrew Troske, Par Pacific; Connor Haggerty, Washington State University; Dana Debel, Delta Airlines; Charles Knutson, Amazon; Diana Birkett Rakow, Alaska Airlines; Kris Johnson, Association of Washington Business; Larry Krauter, Spokane International Airport; Fred Felleman, Port of Seattle; Eric Fitch, Washington Public Ports Association; Emily Wittman, Aerospace Futures Alliance; Lars Erickson, Seattle Chamber; Matthew Hepner, IBEW/ceww.

CON: Ursula Euler; Rob Briggs.

OTHER: Leah Missik, Climate Solutions; Joel Creswell, Washington Department of Ecology.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: This is a significant bill for Washington State. Business, labor, and the environmental community support this bill. Washington is a leader in sustainable aviation fuel development and research, but still does not have a production plant. This bill creates jobs and ensures revenue from sustainable aviation fuel development stays in this state. This bill

advances the production and use of sustainable aviation fuels in Washington. It allows airlines to reduce their carbon emissions by increasing access to sustainable aviation fuels and reducing supply issues. Sustainable aviation fuel currently makes up less than 1 percent of total jet fuel and costs three to five times more than conventional jet fuel. Increasing the supply of sustainable aviation fuels would drive down the cost for consumers. Washington is creating a comprehensive approach to achieving a net-zero carbon initiative and this is a logical next step in meeting this goal. This legislation sends a clear message to fuel producers that the state is shifting toward the production and use of alternative jet fuels. Washington will be a leader in this industry by setting up a competitive environment for alternative jet fuel production. The bill leads to more jobs, increased revenue, and carbon innovation for air travel. Working families need to be at the forefront of clean energy legislation. This is a great opportunity to take advantage of Washington's aerospace sector and research center in a way that supports the state's workforce and clean energy goals. It is important to the building trades that the state produces clean energy in Washington, with a Washington workforce and high labor and environmental standards.

CON: It is too little and too late to promote the production and use of alternative aviation fuels. The climate commitment funds are not for people who fly and should not be used to subsidize the aviation industry. Air pollution still exists even with the use of alternative jet fuels. A better solution would be to address transportation generally.

**Persons Testifying (Ways & Means):** PRO: Senator Andy Billig, Prime Sponsor; Joel Creswell, Washington Department of Ecology; Scott Kennedy, Alaska Airlines; Tom Wolf, bp America; Donny Donovan, IAM 751; Erin Frasier, WA State Building & Construction Trades Council.

CON: Anne Kroeker, No Group.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Modifies the definition of "alternative jet fuel" by removing the specification that the fuel be "made from petroleum or nonpetroleum sources."
- Requires the Clean Fuels Program Report produced by Ecology to include the amount, generation date, and geographic origin of renewable thermal certificates representing the biomethane environmental attributes claimed for certain alternative fuels.
- Modifies the air quality study by removing the requirement to report information to JLARC, changing the reporting entity that facilitates the specified calculations from the Washington State University to the University of Washington, and requiring entities to also report the total volume of conventional jet fuel used for flights during the specified time frame.
- Modifies the definition of "alternative jet fuel" for purposes the preferential B&O tax rate and the B&O and PUT credits for alternative jet fuel manufacturing and use.

- Requires Ecology to consult with the Department of Archeology and Historic Preservation to verify that persons applying for a tax credit are not engaged in the manufacturing of alternative jet fuel at a location listed by the Department of Archeology and Historic Preservation as a historic cemetery or tribal burial grounds.
- Removes the section allowing the Legislature to transfer from the climate committee account to the state general fund an amount equal to the reduction in state revenue from the preferential B&O tax rate and the B&O and PUT credits for the prior calendar year, as annually determined by DOR.