S-3709.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6335**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Hobbs and Saldaña

AN ACT Relating to creating a fossil fuel carbon pollution tax; adding a new chapter to Title 82 RCW; creating a new section; repealing RCW 19.29A.060; and providing a contingent expiration date.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Coal" means bituminous coal, subbituminous coal, lignite, and coke.

(2) "First taxable event" means:

(a) The first possession of natural gas acquired by a gas distribution business;

(b) The first possession of natural gas acquired by a person subject to the tax under RCW 82.12.022 with respect to such natural gas;

(c) The first possession of coal acquired by a person using the coal for the generation of electricity, heat, or steam within the state of Washington;

(d) The first possession of a petroleum product subject to tax under chapter 82.21 RCW; and

(e) The use of fossil fuels by a facility in Washington that results in carbon dioxide emissions in conjunction with the process of distilling, fractionating, refining, or processing of crude oil or petroleum products.

(3) "Fossil fuel" means coal, natural gas, crude oil, and petroleum products.

(4) "Gas distribution business" has the same meaning as provided in RCW 82.16.010.

(5) "Petroleum product" has the same meaning as provided in RCW 82.21.020.

(6) "Qualified sequestration" means sequestration qualified for credit pursuant to RCW 80.70.020 or in accordance with a method established by the department of commerce, in consultation with the department of ecology.

NEW SECTION. **Sec.**  (1) Except as provided in subsection (3) of this section, there is levied and imposed, at the time of the first taxable event and upon the first taxable person within this state, a fossil fuel carbon pollution tax upon the carbon content of fossil fuels extracted, manufactured, or introduced into this state.

(a) Beginning January 1, 2019, the tax rate is equal to fifteen dollars per metric ton of carbon dioxide.

(b) Beginning January 1, 2024, the tax rate is equal to twenty dollars per metric ton of carbon dioxide.

(2) The department must calculate the carbon content of fossil fuels, in consultation with the department of ecology, by using relevant methods based on those established by the United States department of energy or the United States environmental protection agency. The department must develop and make available worksheets and guidance documents necessary to calculate the carbon content of fossil fuels.

(3)(a) A supplier of fossil fuels is not responsible for payment of the tax associated with fossil fuels directly or eventually supplied to an entity as provided in section 3 of this act.

(b) A supplier of fossil fuels is not responsible for payment of the tax associated with fossil fuels directly or eventually supplied to a light and power business for purposes of generating electricity. A light and power business must pay the tax on fossil fuels used to generate electricity that is sold to Washington customers.

(i) The tax on electricity must be paid by the light and power business when it sells electricity for end use. Sales by a light and power business for subsequent resale are not subject to the tax. If a person consumes electricity for which the tax has not been paid by a light and power business including, but not limited to, electricity consumed by a direct service industrial customer, then the person must pay the tax directly to the department.

(ii) The department may not impose the tax on electricity from combined heat and power, and must instead impose the tax at the time of the first taxable event and upon the first taxable person within this state.

(4) The tax levied under this section is imposed only once with respect to the same fossil fuel or electricity generated from fossil fuels.

(5)(a) No state agency may adopt or enforce a statewide program that sets a greenhouse gas emissions standard, limit, cap, or charge except as provided in this chapter.

(b) As of the effective date of this section, chapter 173-442 WAC (the clean air rule) and associated amendments to chapter 173-441 WAC previously adopted by the department of ecology may not be enforced by the department of ecology. Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any other state agency to enact, adopt, order, or in any way implement a rule or policy establishing a statewide limit, cap, or standard to control the amount of greenhouse gas emissions occurring during a period of time.

(6) The carbon pollution tax must be reduced or refunded to the extent that the person who paid the tax can demonstrate that the fossil fuels or electricity in respect to which the tax was paid did not contribute to increasing the atmospheric carbon dioxide concentration by reason of qualified sequestration or such other reason as may be provided by rule adopted by the department of commerce in consultation with the department of ecology. The right to a carbon pollution tax refund or reduction under this subsection may not be transferred, traded, or banked.

NEW SECTION. **Sec.**  (1) The tax levied and imposed under section 2 of this act does not apply to:

(a) Fossil fuels used for air or marine travel between Washington and a jurisdiction outside the geographic borders of Washington;

(b) Fossil fuels purchased in Washington for export for use outside of Washington. Export to a federally recognized Indian tribal reservation located within this state is not considered export outside of Washington;

(c) Fossil fuels brought into this state by means of the fuel supply tank of a motor vehicle, vessel, locomotive, or aircraft;

(d) Fossil fuels that the state is prohibiting from taxing under the Constitution of this state or the Constitution or laws of the United States;

(e) Biofuels or the biofuel component of blended fuels. For purposes of this subsection, "biofuel" includes, but is not limited to, biodiesel, biomethane, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas;

(f) Motor vehicle fuel and special fuel exempt from taxation under RCW 82.38.080;

(g) Diesel fuel or aircraft fuel sold or used solely for agricultural purposes by a farm fuel user, as those terms are defined in RCW 82.08.865, or as part of an off-road forestry operation;

(h) Fuel sold or used for the purpose of public transportation and for which the purchaser is entitled to a refund under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b);

(i) Fuel that is sold or used by a private, nonprofit transportation provider certified under chapter 81.66 RCW and for which the purchaser is entitled to a refund under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b);

(j) Fuel sold or used by the Washington state ferry system for use in a state-owned ferry;

(k) Fuel sold or used for school buses, as defined in and consistent with the requirements of RCW 46.04.521;

(l) Fossil fuels and electricity sold to or used by any business described in RCW 82.04.260(12);

(m) The portion of fuels or electricity derived from wood, wood waste, wood by-products, wood residuals, and agricultural residues; and

(n)(i) Fossil fuels and electricity sold to or used by an energy-intensive trade-exposed business as identified by the department of commerce.

(ii) The department of commerce will establish objective numerical criteria for both energy intensity and trade exposure for the purpose of identifying energy-intensive trade-exposed businesses. The criteria will take into consideration approaches used by other jurisdictions with existing carbon reduction or carbon pricing programs, and the impact of the carbon pollution tax on manufacturing activity, including manufacturers with a 2017 North American industry classification system code 31-33 as developed by the office of management and budget. A business that can demonstrate to the department of commerce that it meets the criteria must be issued a certificate denoting energy-intensive trade-exposed exempt status.

(iii) Notwithstanding the criteria established in this subsection (1)(n)(ii), the department must issue a certificate denoting energy-intensive trade-exposed exempt status to a business with a proper primary North American industry classification system code based on the following activities:

112310: Chicken egg production

112320: Broilers and other meat type chicken production

112330: Turkey production

112340: Poultry hatcheries

112390: Other poultry production

311211: Flour milling

311221: Wet corn milling

311224: Soybean and other oilseed processing

311225: Fats and oils refining and blending

311230: Breakfast cereal manufacturing

311411: Frozen fruit, juice, and vegetable manufacturing

311412: Frozen specialty food manufacturing

311421: Fruit and vegetable canning

311422: Specialty canning

311423: Dried and dehydrated food manufacturing

311511: Fluid milk manufacturing

311512: Creamery butter manufacturing

311513: Cheese manufacturing

311514: Dry, condensed, evaporated, dairy product manufacturing

311520: Ice cream and frozen dessert manufacturing

311611: Animal (except poultry) processing

311612: Meat processed from carcasses

311613: Rendering and meat by-product processing

311615: Poultry processing

311710: Seafood product preparation and packaging

311812: Commercial bakeries

311821: Cookie, cracker manufacturing

311824: Flour mixes and dough manufacturing from purchased flour

311830: Tortilla manufacturing

311911: Roasted nuts and peanut butter manufacturing

311919: Other snack food manufacturing

311930: Flavoring syrup and concentrate manufacturing

311941: Mayonnaise, dressing, and other prepared sauce manufacturing

311942: Spice and extract manufacturing

311991: Perishable prepared food manufacturing

311999: All other miscellaneous food manufacturing

312112: Bottled water manufacturing

322110: Pulp mills

322121: Paper (except newsprint) mills

322122: Newsprint mills

322130: Paperboard mills

324110: Petroleum refineries

325188: All other basic inorganic chemical manufacturing

325199: All other basic organic chemical manufacturing

325311: Nitrogenous fertilizer manufacturing

327211: Flat glass manufacturing

327213: Glass container manufacturing

327310: Cement manufacturing

327410: Lime manufacturing

327420: Gypsum product manufacturing

331111: Iron and steel mills

331312: Primary aluminum production

331315: Aluminum sheet, plate, and foil manufacturing

334413: Semiconductor and related device manufacturing

336411: Aircraft manufacturing

336413: Other aircraft parts and auxiliary equipment manufacturing; or any business described in RCW 82.04.260(12).

(2) Any reductions to the fossil fuel carbon pollution tax rates due under this section may not be considered a credit and may not be transferred, traded, or banked.

NEW SECTION. **Sec.**  (1) The carbon pollution revenues account is created in the state treasury. All receipts from the tax imposed under section 2 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may be used for the following activities:

(a) Not less than forty percent must be transferred to the multimodal account for programs that reduce pollution from transportation sources, reduce congestion, and improve mobility;

(b) Not less than twenty percent must be expended by the department of commerce for programs that advance clean energy technologies and energy efficiency. Appropriations to the department for this purpose may include, but are not limited to:

(i) Projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or otherwise increase energy independence for the state. In funding such projects, the department must be guided by the project selection procedures and standards required by the capital budget in section 1028, chapter 3, Laws of 2015 3rd sp. sess. (Second Engrossed House Bill No. 1115);

(ii) Community energy efficiency programs that provide assistance for energy efficiency assessments and retrofits, with an emphasis upon residential housing serving moderate-income and low-income families;

(iii) Projects that sequester carbon, or result in buildings constructed of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and the component building materials;

(iv) Projects that increase the energy efficiency or reduce the greenhouse gas emissions at manufacturing facilities;

(v) Projects that achieve energy efficiency and emissions reductions in the agricultural sector including fertilizer management, soil management, bioenergy, and biogas; and

(vi) Projects aiding full or partial fuel switching to electricity or fuels not derived from fossil fuels; converting private and public fleets, including transit fleets and school buses, to zero-emission vehicles; and improving freight mobility systems;

(c) Not less than twenty percent must be expended for project-specific planning, design, and construction projects that reduce stormwater impacts from existing infrastructure and development. Grants must be made available to public and private entities for projects that reduce stormwater impacts from existing infrastructure and development, where there is a substantial water quality benefit and the project is not required by court order or required as a condition of a local or state permit;

(d) Not less than five percent must be expended by the department of transportation for fish barrier correction projects at state highways required by the injunction entered in *United States v. Washington* (Civ. No. CV9213RSM). Where the department determines that the amounts appropriated exceed the current biennial appropriation necessary to meet the overall timeline for compliance with the injunction, the department may provide funding for fish barrier correction projects on state or local roadways, with the highest priority for funding to be accorded to projects with the greatest restoration of fish habitat access. In making awards for projects not subject to the injunction the department must obtain the recommendations of the fish passage barrier removal board created in RCW 77.95.160;

(e) Not less than ten percent must be expended for forest fire prevention and suppression and forest management activities. Of these funds:

(i) Not less than fifty percent must be expended for increasing the department of natural resources' capacity for fire prevention and suppression and forest management;

(ii) Not less than twenty-five percent for grants or contracts to other entities including cities, counties, and tribal governments for their activities in fire prevention or suppression; and

(iii) Not less than twenty-five percent transferred to the military department solely for national guard fire prevention and suppression; and

(f) Not less than five percent must be expended for activities at the state department of commerce to benefit rural economic development.

NEW SECTION. **Sec.**  (1) The fossil fuel carbon pollution tax imposed under this chapter is to be collected in addition to all other taxes imposed on fossil fuels.

(2) To the extent practical, the department must integrate the administration and collection of the fossil fuel carbon pollution taxes imposed under this chapter with the administration and collection of other taxes imposed on the taxpayer. The administrative provisions of chapter 82.32 RCW apply to this chapter.

NEW SECTION. **Sec.**  (1) By December 31, 2023, and in compliance with RCW 43.01.036, the joint legislative audit and review committee, in consultation with the department of revenue, the department of commerce, and the department of ecology, must conduct a review of the tax imposed under section 2 of this act to be submitted to the governor and the appropriate committees of the legislature.

(2) The review under this section must include, but is not limited to, an analysis of any net economic impacts on job creation or economic activity that may have been directly or indirectly attributable to this tax, the impact of the tax, if any, on total greenhouse gas emissions, considering both in-state emissions and emissions associated with economic activity occurring outside the state where avoidance of this tax is a possible factor, and the impact of the tax on consumers of energy in Washington, including the proportion of the impact on low-income households. The report must evaluate the effectiveness in the use of revenues to reduce and mitigate the impact of greenhouse gas emissions.

NEW SECTION. **Sec.**  RCW 19.29A.060 (Fuel mix disclosure—Electricity product categories—Disclosure format) and 2000 c 213 s 4 are each repealed.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  (1) If the United States government adopts by statute or rule a charge, tax, regulatory limit, or standard upon the emission of greenhouse gases that is imposed broadly upon those persons subject to the state tax in section 2 of this act, this act expires on the date that such federal statute or rule is adopted.

(2) If an initiative measure by the people creates a charge, tax, regulatory limit, or standard upon the emission of greenhouse gases that is imposed broadly upon those persons subject to the state tax imposed under section 2 of this act, this act expires on the earliest date that any section of the initiative measure creating such a charge, tax, regulatory limit, or standard takes effect.

(3) The department must provide written notice of the expiration date of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**--- END ---**