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**HOUSE BILL 1534**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Shewmake, Lekanoff, Santos, and Pollet

Read first time 02/12/21. Referred to Committee on Environment & Energy.

1 AN ACT Relating to establishing a carbon pollution tax that  
2 recognizes the nature of energy-intensive, trade-exposed industries;  
3 and adding a new chapter to Title 82 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to create cost-  
6 effective climate policy that recognizes the special nature of  
7 energy-intensive, trade-exposed industries. The legislature further  
8 intends to encourage these industries to continue to innovate, find  
9 new ways to be more energy efficient, use lower carbon products, and  
10 be positioned to be global leaders in a low carbon economy, while  
11 also recognizing that overly burdensome regulation or taxation could  
12 result in perverse consequences and potentially increase overall  
13 carbon pollution.

14 An economy-wide carbon tax is one of the most cost-effective  
15 methods to reduce greenhouse gas emissions, but may have unintended  
16 consequences in certain sectors. To mitigate these impacts this act  
17 will, in tandem with chapter . . . , Laws of 2021 (House Bill No.  
18 1513), create incentives to reduce carbon pollution while recognizing  
19 the unique nature of energy-intensive, trade-exposed industries.

1        NEW SECTION.        **Sec. 2.**        The definitions in section 2,  
2 chapter . . ., Laws of 2021 (House Bill No. 1513) and this section  
3 apply throughout this chapter unless the context clearly requires  
4 otherwise.

5        (1) "Department" means the department of revenue.

6        (2) "EITE facility" means a manufacturing business that meets the  
7 criteria established by the department of commerce in section 5 of  
8 this act.

9        (3) "Presumptive emissions" means the emissions that a facility  
10 is expected to emit given its output and current standards of  
11 technology.

12        NEW SECTION.        **Sec. 3.**        The carbon tax benefits account is created  
13 in the state treasury. All receipts from the tax levied and collected  
14 under section 4 of this act on fossil fuels consumed by EITE  
15 facilities must be deposited into the account. Moneys in the account  
16 may be spent only after appropriation. Expenditures from the account  
17 may only be used for the purposes of implementing the working  
18 families tax exemption established in RCW 82.08.0206 and for  
19 workforce transition investments.

20        NEW SECTION.        **Sec. 4.**        (1)(a) Beginning July 1, 2022, a carbon  
21 pollution tax is imposed on the sale or use within this state of all  
22 fossil fuels by EITE facilities.

23        (b) The measure of the carbon pollution tax is the carbon dioxide  
24 equivalent emissions:

25        (i) Resulting from the complete combustion or oxidation of fossil  
26 fuels sold or used by the EITE facility within this state; and

27        (ii) From the entire life cycle of the fossil fuel.

28        (2)(a) The tax rate as of July 1, 2022, is equal to \$25 per  
29 metric ton of greenhouse gas emissions. The department and EITE  
30 facilities must measure greenhouse gas emissions for each type and  
31 unit of fossil fuel consistent with subsection (3) of this section.  
32 The tax rate annually increases automatically each July 1st  
33 thereafter by five percent, and is adjusted for inflation using the  
34 consumer price index.

35        (b) As of January 1, 2030, if the department of ecology, based on  
36 data collected by the department on total fuels subject to the tax in  
37 (a) of this subsection in the previous year, determines that the  
38 sources of emissions covered by the tax are not predicted to achieve

1 their combined share of the emissions reductions necessary for the  
2 state to achieve the emissions limits established in RCW 70A.45.020,  
3 the tax rate established in (a) of this subsection must increase by  
4 \$10 beginning July 1, 2031. Each year thereafter, the tax rate must  
5 continue to increase by five percent each year plus inflation, with  
6 an additional annual increase of \$2 each year until the department of  
7 ecology determines that the sources of emissions covered by the tax  
8 are expected to meet the limits established in RCW 70A.45.020, at  
9 which point the additional \$2 per year increase is retired, and the  
10 annual rate of increase returns to five percent plus inflation. Every  
11 two years between the years 2030 and 2050, the department, in  
12 consultation with the department of ecology, must reevaluate the  
13 necessary tax rate to ensure the state achieves a goal of net zero  
14 emissions by 2050. The department of ecology must make the  
15 determinations required under this subsection and notify the  
16 department by April 1st of each odd-numbered year. If the output  
17 adjusted emissions of an EITE facility meet the percentage reductions  
18 established in RCW 70A.45.020 as compared to 1990 average output  
19 adjusted emissions, then the additional annual increases are not  
20 applied to that EITE facility.

21 (3) The department must determine the tax in each case by  
22 applying a carbon calculation using methodologies adopted by the  
23 department of ecology as follows:

24 (a) For any fuels used to refine fossil fuels by an EITE  
25 facility, the department of ecology must adopt by rule criteria for  
26 making the carbon calculation in consultation with the department.  
27 The department of ecology must consider, among other information, the  
28 reports filed under section 11 of this act. Among other resources,  
29 the department of ecology must consider greenhouse gas content  
30 measurements for fossil fuels from the United States energy  
31 information administration or the United States environmental  
32 protection agency;

33 (b) For all other fuels sold or used in Washington by an EITE  
34 facility, the department of ecology, in consultation with the  
35 department, must adopt by rule criteria for making the carbon  
36 calculation; and

37 (c) The department of ecology may require additional information  
38 from sources as necessary, in consultation with the department of  
39 commerce, for determining the carbon calculation under this chapter.

1 (4) For the purposes of this chapter, the carbon pollution tax is  
2 imposed upon EITE facilities that are taxable persons under RCW  
3 82.32.030(1):

4 (a) Only once with respect to the same unit of fossil fuel or  
5 electric energy;

6 (b) At the time and place of the first event within this state in  
7 which the tax is applicable, occurring on or after the effective date  
8 of this section, regardless of whether the fossil fuel was previously  
9 sold, used, or consumed within this state before the effective date  
10 of this section;

11 (c) Upon the first EITE facility within this state upon which the  
12 tax would be applicable, for fossil fuels sold by one EITE facility  
13 to another EITE facility;

14 (d) For greenhouse gases emanating into the atmosphere as a  
15 result of the consumption of fuels in refineries, in accordance with  
16 the requirements of section 11 of this act; and

17 (e) In accordance with and at the intervals provided in chapters  
18 82.08 and 82.12 RCW.

19 (5) Motor vehicle fuel and special fuel used on the property of  
20 an EITE facility but which are not counted towards EITE facility  
21 operations for purposes of greenhouse gas emissions reporting under  
22 chapter 70A.15 RCW are not subject to the tax imposed under this  
23 chapter, and are instead subject to the tax imposed in chapter . . . ,  
24 Laws of 2021 (House Bill No. 1513).

25 (6) The carbon pollution tax created in this section is imposed  
26 on the sale or use of natural gas as follows:

27 (a) Natural gas transported through the state that is not  
28 produced or delivered in the state to an EITE facility is exempt from  
29 the carbon pollution tax. Natural gas possessed or stored in this  
30 state is exempt from the carbon pollution tax unless the tax is  
31 otherwise applicable under (b) or (c) of this subsection (6);

32 (b) For natural gas sold by a gas distribution business to an  
33 EITE facility that is a retail customer in the state, the carbon  
34 pollution tax is imposed on the EITE facility upon the sale or  
35 consumption of such natural gas by the EITE facility; and

36 (c) For natural gas sold to an EITE facility that is a direct  
37 access gas customer in the state, the carbon pollution tax is imposed  
38 on the direct access gas customer upon the sale or consumption of  
39 such natural gas by the EITE facility.

1 (7) (a) The carbon pollution tax may not be applied to the sale or  
2 use of any fossil fuels upon which the tax created in this section  
3 has been previously imposed.

4 (b) A sale of fossil fuel takes place in the state when the  
5 fossil fuel is delivered to a purchaser or a person designated by the  
6 purchaser, notwithstanding any contract terms designating a location  
7 outside of this state as the place of sale.

8 (c) All sales within this state of a fossil fuel subject to the  
9 carbon pollution tax must document the amount of carbon pollution tax  
10 paid in accordance with rules adopted by the department.

11 (8) For EITE facility taxpayers who are also subject to any of  
12 the taxes imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW,  
13 the frequency of reporting and payment of the carbon pollution tax  
14 must, to the extent practicable and unless otherwise provided in this  
15 section, coincide with a taxpayer's reporting periods for the taxes  
16 imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW.

17 (9) (a) The department must adopt rules necessary to implement the  
18 carbon pollution tax created in this section. The department must  
19 develop and make available worksheets and guidance documents  
20 necessary to calculate the carbon pollution tax for various fuels.  
21 The department must adopt rules and provide forms with respect to  
22 reporting the sale or use of each type of fossil fuel used by EITE  
23 facilities. EITE facilities subject to the tax imposed under this  
24 section must provide to the department information regarding the sale  
25 or use of fuel consistent with the requirements adopted by the  
26 department.

27 (b) All taxable sales within this state of a fossil fuel must  
28 document the amount of carbon pollution tax paid in accordance with  
29 rules adopted by the department.

30 (c) Persons subject to the tax imposed under this section must  
31 provide accounting and reporting to the department relating to how  
32 the costs of the carbon pollution tax obligation are passed on to  
33 consumers.

34 NEW SECTION. **Sec. 5.** (1) (a) Until July 1, 2030, a credit may be  
35 taken against the tax imposed under section 4 of this act in an  
36 amount equal to the amount of the tax attributable to 70 percent of  
37 an EITE facility's greenhouse gas emissions in 2019 plus any amounts  
38 specified in section 7 of this act, determined as provided in this  
39 section. For new EITE facilities that begin activities after January

1 1, 2020, but before January 1, 2030, or if presumptive emissions  
2 calculations are available before 2030 and larger than 2019  
3 emissions, the facility may take a credit equal to 70 percent of the  
4 EITE facility's presumptive greenhouse gas emissions plus any amounts  
5 specified in section 7 of this act, as determined by the department  
6 of ecology, or emissions for the most recent year for which actual  
7 greenhouse gas emissions are available. The purpose of the credit is  
8 to mitigate the risk of leakage of emissions from within the state to  
9 instead occur beyond the borders of the state, to support the  
10 competitiveness of the state's energy-intensive, trade-exposed  
11 industries, and to provide assistance to such businesses to achieve  
12 greater energy efficiency and implement lower carbon manufacturing  
13 processes.

14 (b) Beginning July 1, 2030, the department must adjust the amount  
15 of credit that may be claimed by each EITE facility so that the EITE  
16 facility may claim any amounts specified in section 7 of this act  
17 plus credits to offset 70 percent of the lesser of either:

18 (i) The greenhouse gases attributable to a best in class facility  
19 creating the same industrial output, as determined by the department  
20 of ecology; or

21 (ii) The emissions the department of ecology determines the  
22 facility would produce if all life-cycle cost-effective efficiency  
23 measures identified by a third-party energy service company using the  
24 office of financial management's Washington state life-cycle cost  
25 tool were implemented.

26 (c) By January 1, 2030, the department of ecology must determine  
27 a best in class benchmark for all EITE facilities that paid taxes  
28 under this chapter during any year between 2022 and 2029.

29 (d) For new EITE facilities that begin activities after January  
30 1, 2030, that require them to pay the tax imposed under this chapter,  
31 the department of ecology must determine a best in class benchmark  
32 for that facility by no later than two years after the beginning of  
33 the activity. Until a best in class benchmark is determined for an  
34 EITE facility under this subsection, the facility may take a credit  
35 equal to 70 percent of the EITE facility's presumptive greenhouse gas  
36 emissions, as determined by the department of ecology, or emissions  
37 for the most recent year for which actual greenhouse gas emissions  
38 are available.

39 (2) The department of commerce in consultation with the  
40 department of ecology shall by rule adopt objective numeric criteria

1 for identifying EITE facilities and the greenhouse gas emissions  
2 emitted from such facilities. The rules must establish a greenhouse  
3 gas emissions baseline for each EITE facility that takes into  
4 consideration both production output and number of employees. The  
5 rules must include but are not limited to designating facilities in  
6 the cement, steel, aluminum, food processing, pulp and paper, and  
7 aircraft, missile, and space craft production industries. The rules  
8 must be adopted by June 30, 2022.

9 (3) (a) An EITE facility that takes a credit under this section  
10 may trade credits to another EITE facility that owes taxes under this  
11 chapter.

12 (b) An EITE facility that takes a credit under this section may  
13 bank tax credits for use to meet future tax obligations during any of  
14 the subsequent three tax years.

15 (4) The department of commerce must adopt rules to administer the  
16 EITE credit program. The rules must provide criteria for disallowing  
17 credits or recapture of the value of the credit when an EITE facility  
18 fails to meet the requirements of this section.

19 NEW SECTION. **Sec. 6.** The department of ecology, in establishing  
20 benchmarks and presumptive emissions applicable to an EITE facility  
21 for a compliance period, must consider or exclude any abnormal  
22 operating periods when an EITE facility's carbon intensity has been  
23 materially affected by circumstances that are unlikely to manifest  
24 during the applicable compliance period.

25 NEW SECTION. **Sec. 7.** (1) In addition to the credits that an  
26 EITE facility may claim under section 5 of this act, an EITE facility  
27 that achieves employment performance standards may claim credits  
28 equal to:

29 (a) An additional two percent of the applicable greenhouse gas  
30 emissions volume specified in section 5 of this act, for EITE  
31 facilities that exceed the minimum threshold of cumulative points  
32 established by the department of labor and industries under section 8  
33 of this act;

34 (b) An additional 3.5 percent of the applicable greenhouse gas  
35 emissions volume specified in section 5 of this act, for EITE  
36 facilities that both:

1 (i) Exceed the minimum threshold of cumulative points established  
2 by the department of labor and industries under section 8 of this  
3 act; and

4 (ii) Did not experience a decrease in the number of full-time  
5 jobs associated with the facility over the most recent two years; or

6 (c) An additional amount between 3.5 percent and five percent of  
7 the applicable greenhouse gas emissions volume specified in section 5  
8 of this act, for EITE facilities that both:

9 (i) Exceed the minimum threshold of cumulative points established  
10 by the department of labor and industries under section 8 of this  
11 act; and

12 (ii) Experienced an increase in the number of full-time jobs  
13 associated with the facility over the most recent two years.

14 (2) The amount of credits awarded to an EITE facility specified  
15 in subsection (1)(c) of this section is equal to 3.5 percent of the  
16 applicable greenhouse gas emissions volume specified in section 5 of  
17 this act plus the percentage rate in employment increase experienced  
18 by the EITE facility, as calculated by:

19 (a) Subtracting the number of full-time employees at the EITE  
20 facility during the year preceding the most recent year for which  
21 such data were reported from the number of full-time employees at the  
22 EITE facility during the most recent year for which such data were  
23 reported; and

24 (b) Dividing the result in (a) of this subsection by the number  
25 of full-time employees at the EITE facility during the year preceding  
26 the most recent year for which such data were reported.

27 NEW SECTION. **Sec. 8.** (1) The department of labor and industries  
28 must develop a point system corresponding to various business  
29 practices, employee benefits, or policies concerning treatment of  
30 workers, and will establish a minimum threshold of cumulative points  
31 that will constitute meeting the standards of section 7(1)(a) of this  
32 act.

33 (2) The department of labor and industries may consider a variety  
34 of such practices, benefits, or policies, with a special emphasis on:

35 (a) Having in effect a collective bargaining agreement, or  
36 establishing and having in effect a policy whereby the employer  
37 agrees to remain neutral or otherwise agrees to work with or provide  
38 information to a bona fide labor organization for the purposes of  
39 unionizing employees;



1 (b) Offering at least 85 percent of employees health care  
2 coverage under a health benefits plan that is equal to or better than  
3 a silver plan that can be acquired through the Washington health  
4 benefit exchange created under chapter 43.71 RCW, and that includes a  
5 coverage option for dependents of employees. To qualify for this  
6 provision, the majority of premium costs under such a plan must be  
7 funded by the employer;

8 (c) Providing at least 85 percent of employees a living wage. In  
9 determining the appropriate level for living wage, the department of  
10 labor and industries cannot set a level that is below the median  
11 hourly wage of the county in which a project is proposed to be sited;

12 (d) Offering at least 85 percent of employees retirement  
13 benefits;

14 (e) Establishing and having in effect a policy whereby the  
15 employer will prioritize hiring workers:

16 (i) Displaced from or having an elevated likelihood of being  
17 displaced from sectors vulnerable to a transition to a low-carbon  
18 economy; and

19 (ii) Who live close to the place of work and face barriers to  
20 employment; and

21 (f) Using state-registered apprenticeship programs.

22 (3) The department of labor and industries may establish  
23 different standards for different sectors if necessary and  
24 appropriate to reflect variations in workplace conditions among  
25 sectors and may incorporate other flexibility mechanisms to  
26 facilitate both protection of workers and to ensure that project  
27 sponsors have a high likelihood of being able to comply with the  
28 criteria established under this subsection.

29 NEW SECTION. **Sec. 9.** (1) The carbon pollution tax imposed on  
30 EITE facilities in section 4 of this act does not apply to:

31 (a) Biogenic fuels;

32 (b) Fossil fuels upon which the state is prohibited from imposing  
33 a tax under the state Constitution or the Constitution or laws of the  
34 United States;

35 (c) (i) Fossil fuels exported from this state. Export to Indian  
36 country located within the boundaries of this state is not considered  
37 export from this state. For purposes of this subsection, "Indian  
38 country" has the same meaning as provided in RCW 37.12.160.

1 (ii) An exporter of fossil fuels upon which another person  
2 previously paid the carbon pollution tax is entitled to a credit or  
3 refund of the tax paid, if the exporter can establish to the  
4 department's satisfaction that the tax under this chapter was  
5 previously paid on the exported fossil fuels. The person who paid the  
6 carbon pollution tax is not entitled to an exemption under this  
7 subsection (1)(c) when any other person is entitled to a refund or  
8 credit under this subsection (1)(c)(ii). For purposes of this  
9 subsection, "exporter" means a person who exports fossil fuels from  
10 this state;

11 (d) Biogas, which includes renewable liquid natural gas or liquid  
12 compressed natural gas made from biogas, landfill gas, biodiesel,  
13 renewable diesel, and cellulosic ethanol;

14 (e) Aircraft fuel as defined in RCW 82.42.010;

15 (f) Activities or property of Indian tribes and individual  
16 Indians that are exempt from state imposition of a tax as a matter of  
17 federal law or state law, whether by statute, rule, or compact.

18 (2)(a) For any fossil fuels subject to the carbon pollution tax  
19 imposed by section 4 of this act that are also subject to a  
20 comparable carbon pollution tax or charge on carbon content imposed  
21 by another jurisdiction, including the federal government, or  
22 allowances required to be purchased by another jurisdiction, the EITE  
23 facility may take a credit against the tax imposed under this chapter  
24 by the amount of the comparable pollution tax or charge paid to the  
25 other jurisdiction up to the amount of tax owed under this chapter,  
26 provided that the EITE facility claiming the credit provides evidence  
27 acceptable to the department that the equivalent tax has been paid.

28 (b) For the purposes of this section, a comparable carbon  
29 pollution tax or charge means a tax or charge that is not generally  
30 imposed on other activities or privileges that is:

31 (i) Imposed on the sale, use, possession, transfer, or  
32 consumption of fossil fuels; and

33 (ii) Measured in terms of greenhouse gas emissions by the  
34 greenhouse gas emissions resulting from the complete combustion or  
35 oxidation of such fossil fuels.

36 NEW SECTION. **Sec. 10.** The provisions of chapter 82.32 RCW apply  
37 to this chapter. If there is a conflict between a provision of this  
38 chapter and a provision of chapter 82.32 RCW, the provision of this  
39 chapter controls.

1        NEW SECTION.    **Sec. 11.**    (1) Persons using fossil fuels to refine  
2 fossil fuels and that are designed as EITE facilities by the  
3 department of commerce must file with the department:

4        (a) A fuel use report similar to the United States environmental  
5 protection agency facility level information on greenhouse gases tool  
6 report containing their fossil fuel greenhouse gas emissions; and

7        (b) Such other information as the department may require by rule.

8        (2) (a) The department may adopt by rule a day each month by which  
9 the information specified in subsection (1) of this section must be  
10 submitted to the department for the previous calendar month, together  
11 with the tax calculated thereon based on the tax tables adopted by  
12 the department and the department of ecology. The tax on the carbon  
13 content reported must be paid to the department within 15 days of the  
14 filing required by subsection (1) of this section.

15        (b) The rules adopted by the department under this section may  
16 allow a refinery to file an interim report based on estimates  
17 together with an estimated payment based thereon and then file a  
18 final report at a later date specified by the department. The  
19 department must impose interest and penalties on underpayments in  
20 accordance with the requirements of chapter 82.32 RCW.

21        NEW SECTION.    **Sec. 12.**    (1) The directors of the department, the  
22 department of commerce, and the department of ecology, must adopt  
23 rules necessary to implement and administer this chapter and may  
24 coordinate concerning the process, timelines, and documentation  
25 related to such rule making, as necessary.

26        (2) By April 1, 2022, the department of ecology, in consultation  
27 with the department, must adopt a rule providing for the measurement  
28 of the carbon content of fossil fuel for purposes of the tax imposed  
29 under this chapter. The department must rely on the rule adopted by  
30 the department of ecology for purposes of imposing and administering  
31 the tax.

32        NEW SECTION.    **Sec. 13.**    As of the effective date of this section,  
33 chapter 173-442 WAC may not be enforced by the department of ecology  
34 with respect to EITE facilities. If the tax imposed under this  
35 chapter is invalidated, the department of ecology is directed to use  
36 the full extent of its authority to regulate greenhouse gas emissions  
37 from EITE facilities under chapter 70A.15 RCW to help achieve the  
38 limits specified in RCW 70A.45.020.

1        NEW SECTION.    **Sec. 14.**    The provisions of RCW 82.32.805 and  
2    82.32.808 do not apply to this act.

3        NEW SECTION.    **Sec. 15.**    If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.

7        NEW SECTION.    **Sec. 16.**    Sections 1 through 15 of this act  
8    constitute a new chapter in Title 82 RCW.

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