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**HOUSE BILL 1768**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Shavers, Barnard, Chapman, and Ramel

AN ACT Relating to exempting certain sales of electricity to qualifying green businesses from the public utilities tax; adding a new section to chapter 82.16 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) Beginning October 1, 2023, and for 10 years from the date of commercial operation of the business, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a qualifying business if:

(a) The commercial operation commences no later than July 1, 2033; and

(b) The contract for sale of electricity to the business contains the following terms:

(i) The electricity to be used in the qualifying activities is separately metered from the electricity used for general operations of the business; and

(ii) The price charged for the electricity used in the qualifying activities is reduced by an amount equal to the tax exemption available to the light and power business under this section.

(2) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the qualifying activities.

(3) In order to claim an exemption under this section, a qualifying business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(4) A person receiving the benefit of the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Compression" means compressing a gas, or a gas compressed, to a pressure above ambient atmospheric pressure for processing, storage, or transportation.

(b) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(c) "Qualifying activities" means the green electrolytic hydrogen production process, the renewable hydrogen production process, and the compression, liquification, storage, or dispensing of green electrolytic hydrogen or renewable hydrogen.

(d) "Qualifying business" means a business using electricity in qualifying activities for qualifying projects.

(e) "Qualifying projects" means projects where the use of the hydrogen is included in the state energy strategy including, but not limited to, high heat industry, fuel for decarbonization of transportation, including aviation, maritime, and surface transportation, storage or generation of electricity, or otherwise for use as a fuel that can be demonstrated to have a carbon intensity of less than one pursuant to chapter 70A.535 RCW and the rules adopted under RCW 70A.535.025.

(f) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.

(g) "Renewable natural gas" has the same meaning as provided in RCW 54.04.190.

(h) "State energy strategy" means the document developed by the department of commerce pursuant to RCW 43.21F.090 in effect at the initiation of construction of a qualifying project.

(6) This section expires January 1, 2045.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 1, chapter . . ., Laws of 2023 (section 1 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to attract and retain renewable and clean hydrogen production facilities whose production outputs will be used in place of fossil fuel derived fuels and manufacturing feedstocks that they replace.

(4) To measure the effectiveness of the tax preference in section 1 of this act, the joint legislative audit and review committee must, using calendar year 2022 as the baseline, evaluate the annual volumetric quantity of renewable hydrogen and green electrolytic hydrogen produced in the state, as well as the annual percentage of hydrogen produced in the state that is either green electrolytic hydrogen or renewable hydrogen.

(5) In order to obtain the data necessary to perform the evaluation in subsection (4) of this section, the department of revenue must provide data needed for the joint legislative audit and review committee analysis. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary.

NEW SECTION. **Sec.**  This act takes effect October 1, 2023.

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