

# SENATE BILL REPORT

## SB 5091

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As Reported by Senate Committee On:  
Business, Financial Services, Gaming & Trade, February 16, 2023  
Ways & Means, April 4, 2023

**Title:** An act relating to creating and expanding tax incentives for the research, development, production, and sale of hydrogen fuel cells in Washington State.

**Brief Description:** Creating and expanding tax incentives for the research, development, production, and sale of hydrogen fuel cells in Washington State. [**Revised for 1st Substitute:** Creating and expanding tax incentives for the research, development, production, and sale of hydrogen fuel products in Washington State.]

**Sponsors:** Senators King, Conway, Gildon, Mullet, Short and Van De Wege.

**Brief History:**

**Committee Activity:** Business, Financial Services, Gaming & Trade: 1/19/23, 2/16/23 [DPS-WM].  
Ways & Means: 3/09/23, 4/04/23 [DP2S].

**Brief Summary of Second Substitute Bill**

- Authorizes state business and occupation tax incentives for hydrogen fuel product research, development, production, and sale.
- Requires the Joint Legislative Audit and Review Committee to evaluate the effectiveness of the tax incentives in achieving their stated public policy objectives prior to the expiration of the tax incentives in 2035.

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### SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

**Majority Report:** That Substitute Senate Bill No. 5091 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member;

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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.*

Boehnke, Gildon, Hasegawa, Lovick, MacEwen and Mullet.

**Staff:** Jeffrey Mitchell (786-7438)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5091 be substituted therefor, and the second 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; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Jeffrey Mitchell (786-7438)

**Background:** Tax Preference Review Requirements. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) 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 review the effectiveness of the preference in achieving its stated public policy objectives. Tax preferences must be reviewed by JLARC at least once every ten years, unless state statute requires otherwise. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

State Business and Occupation Tax. The state business and occupation (B&O) tax is Washington's primary business tax. It is a gross receipts tax measured on the value of products, gross proceeds of sale, or gross income of the business. There are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by classification (activity). The major rates are: 0.471 percent retailing activities, 0.484 percent manufacturing and wholesaling activities, and for service and other activities, either 1.5 percent or 1.75 percent, depending upon the amount of annual gross income of the business. The state B&O tax includes a number of preferential tax rates, credits, exemptions, and deductions.

Clean Alternative Fuel Tax Preferences. A clean alternative fuel generally means natural gas, propane, hydrogen, or electricity. State law provides a number of tax preferences related to vehicles that use a clean alternative fuel, which includes:

- sales and use tax exemptions for the purchase of clean alternative fuel vehicles;
- public utility tax and B&O tax credits for commercial vehicles using clean alternative

fuels;

- sales and use tax exemptions on electric vehicle infrastructure, electric vehicle batteries and fuel cells, and zero emissions buses; and
- a sales and use tax deferral program on the construction of facilities used for clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

**Summary of Bill (Second Substitute):** Several new B&O tax preferences are created for activities related to hydrogen fuel product research, development, production, and sale. Hydrogen fuel product means a hydrogen fuel cell or a hydrogen electrolyzer. Hydrogen fuel cell means a technology that uses an electrochemical reaction to generate electric energy by combining atoms of hydrogen and oxygen in the presence of a catalyst. Hydrogen electrolyzer means a technology that uses an electrochemical reaction to generate hydrogen by combining water and electricity in the presence of a catalyst.

Beginning January 1, 2024, a preferential B&O tax rate of 0.2904 percent applies to businesses engaged in the manufacturing of hydrogen fuel products, or making sales at wholesale or retail, of hydrogen fuel products. The preferential B&O tax rate only applies if the products are also manufactured by the seller and the business pays prevailing wages to the extent job classifications of the employer have prevailing wage rates.

For expenditures occurring after January 1, 2024, a B&O tax credit is allowed for qualified hydrogen fuel product development. The credit is equal to the amount of qualified hydrogen fuel product development expenditures of a business, multiplied by the rate of 1.75 percent. Qualified hydrogen fuel product development expenditures would be comprised primarily of wages and compensation paid for the research, design, and engineering activities performed in the state in relation to the development of hydrogen fuel products, hydrogen fuel product technology, or a product line of a hydrogen fuel product, including prototype development, testing, and certification. It would also include expenditures for the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas or inventions, and the adaptation of existing products into new products, and tool design and engineering design for the manufacturing process. Qualified hydrogen fuel product development expenditures does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software development for internal use, and research in peripheral areas. A business claiming the credit must file with the Department of Revenue a form that specifies the amount of the credit claimed, an estimate of the anticipated hydrogen fuel product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and any additional information the Department of Revenue requires. The total amount of statewide credit that may be claimed each year is capped at \$3 million. A business may earn R&D B&O credits only for amounts paid for full-time employees directly employed by the business, engaged in hydrogen fuel product development, and paid an annualized amount at or above 125

percent of per capita county personal income.

A B&O credit is allowed for state and local property taxes and leasehold excise taxes paid on land and buildings constructed after July 1, 2023. The buildings must be used exclusively for manufacturing hydrogen fuel cells. Personal property taxes paid on machinery and equipment (M&E) used at the facility would also qualify for the B&O tax credit if the M&E was exempt under statute from sales and use taxes. The total amount of statewide credit that may be claimed each year is capped at \$3 million. To claim the B&O credit for state and local property taxes, the business must pay prevailing wages to the extent job classifications of the employer have prevailing wage rates.

Both B&O tax credits may be earned for tax reporting periods beginning on or after January 1, 2024, and before December 31, 2033, and unused credits may be carried over and claimed against the person's tax liability for the next succeeding calendar year.

The B&O tax preferences expire January 1, 2035.

The legislation includes a TPPS. The stated public policy objective is to encourage hydrogen fuel product research, development, and manufacture in Washington, and to increase the number and wage level of jobs in this industry. The JLARC will evaluate:

- the number of businesses and employees in this state focused on hydrogen fuel product research, development, or manufacture, including examination of employee wages and benefits;
- whether Washington businesses focused on hydrogen fuel product research, development, and manufacturing in the state have made advancements in hydrogen fuel product technology, which may include examination of the number of patents filed with the United States patent and trademark office, research and development spending, products delivered to market, and any other metrics deemed relevant by the committee; and
- business and employment changes in hydrogen fuel product research, development, and manufacture in Washington compared with national changes in the industry.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):**

- Clarifies in the tax preference performance statement that it is green electrolytic hydrogen that is subject to the tax incentives in the bill.

**EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES, GAMING & TRADE COMMITTEE (First Substitute):**

- Eliminates the presumption in the tax preference performance statement that the Legislature intends to extend the tax preferences if certain conditions are met.
- Makes other revisions to the tax preference performance statement.

- Extends eligibility of the tax preferences to the manufacture and sale of hydrogen electrolyzers.
- Allows the preferential B&O tax rate for selling hydrogen fuel products only if the products are manufactured by the seller.
- Requires the payment of wages at prevailing wage rates in order to use the preferential B&O tax rate and B&O credit for property taxes, to the extent job classifications of the employer have prevailing wage rates.
- Restricts the earning of R&D B&O credit to amounts paid for full-time employees directly employed by the business, engaged in hydrogen fuel product development, and paid an annualized amount at or above 125 percent of per capita county personal income.
- Caps the total amount of statewide annual B&O credits that may be claimed at \$3 million for each credit.
- Requires taxpayers to electronically file in order to claim B&O credits.
- Moves back the effective date for the tax preferences to January 1, 2024.
- Changes the expiration date of the tax preferences from 2034 to 2035.
- Clarifies that B&O tax credits may be earned for tax reporting periods beginning on or after January 1, 2024, and before December 31, 2033, and unused credits may be carried over and claimed against the person's tax liability for the next succeeding calendar year.
- Makes other technical clarifications and corrections.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The pacific northwest region is a leader in the renewable hydrogen sector. This is born out of the Pacific Northwest Regional Clean Hydrogen hub receiving a letter of encouragement from the U.S. Department of Energy to apply for hydrogen hub funding made available under the federal bipartisan infrastructure law. The workforce and the hydrogen clean energy sector would be positively impacted by this bill, executing goals to decarbonize our footprint. This bill compliments efforts to reduce our carbon footprint by creating an incentive program that will bring manufacturing and technology innovation to the renewable energy sector, create jobs, and leverage Washington's excellent higher education, research, and development resources. We already have a skilled and trained workforce that is ready to work in the renewable energy sector to promote a smooth transition away from natural gas. By supporting the production of sustainable green hydrogen, Washington can lead the way in achieving net zero greenhouse gas emissions by 2050. It is critical that we create new jobs in our

economy that are beneficial for both workers and the environment. Creating a preferential business occupation tax rate and tax credit for those researching and manufacturing the energy infrastructure of the future will help incentivize interested members to grow their business here in Washington. The reverse process of the fuel cell, electrolysis, inputs water and electricity to split the water from the hydrogen. There is a request for electrolyzers and related equipment to be added to this bill because any research for hydrogen fuel cells and electrolyzers support the counter's development.

**Persons Testifying (Business, Financial Services, Gaming & Trade):** PRO: Senator Curtis King, Prime Sponsor; Seth Worley, Plumbers and Steamfitters UA Local 598; Michelle Detwiler, Renewable Hydrogen Alliance; Donny Donovan, IAM 751; Dave Warren, WA Green Hydrogen Alliance; Troy Nichols, Phillips 66.

**Persons Signed In To Testify But Not Testifying (Business, Financial Services, Gaming & Trade):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will promote research, development and manufacturing of hydrogen powered fuel cells and electrolyzers. Some refinements should be sought to ensure that its effect will fully align with its intent. The language of 125 percent of median per capita income should be adjusted to 100 percent. This bill has the potential to bring significant value to a project that is intended to be developed in Moses Lake. This bill's incentives will help leverage federal funding.

**Persons Testifying (Ways & Means):** PRO: Michelle Detwiler, Renewable Hydrogen Alliance; Dave Warren, WA Green Hydrogen Alliance; Derek Phelps, Twelve.

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