

# SENATE BILL REPORT

## SB 5447

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As of February 1, 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:** 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.

**Brief Summary of Bill**

- Requires the Department of Ecology (Ecology) to amend the energy economy ratio for alternative jet fuel relative to conventional jet fuel from the value of 1.0 to 1.3 within ten years after the in-state production capacity of alternative jet fuel is sufficient to satisfy the business and operations (B&O) tax requirements of this act.
- 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 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 a facility capable of producing 20 million gallons of alternative jet fuel is operating in this state, 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

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

**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.

**Summary of Bill: Incentive Enhancements.** Ecology must amend the energy economy ratio for alternative jet fuel relative to conventional jet fuel from the value of 1.0 to 1.3 within ten years after the in-state production capacity of alternative jet fuel is sufficient to satisfy the B&O tax requirements of this act. The energy economy ratio must be reduced at a rate of 0.1 every three years until it is equal to 1.0

**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 a facility capable of producing at least 20,000,000 gallons of alternative jet fuels is 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 and collaborate with the work group.

**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 a facility capable of producing at least 20,000,000 gallons of alternative jet fuel is operating in Washington. 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 originating in Washington. The credit applies only to alternative jet fuel that meets the appropriate American Society for Testing Materials international standards.

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 qualify 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 a facility capable of producing at least 20,000,000 gallons of alternative jet fuel is operating in Washington. Credits may be earned for ten years and may be claimed until used.

The preferential tax rate and tax credits are subject to review by JLARC. The automatic 10-year expiration for tax preferences does not apply to this act.

**Appropriation:** None.

**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:** 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:** 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:** No one.