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**SUBSTITUTE HOUSE BILL 1729**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Finance (originally sponsored by Representatives Abbarno, Klicker, Volz, Orcutt, Schmidt, and Cheney)

READ FIRST TIME 03/13/23.

1 AN ACT Relating to creating and expanding tax incentives for the  
2 research, development, production, and sale of hydrogen fuel products  
3 in Washington state; adding new sections to chapter 82.04 RCW;  
4 creating a new section; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** (1) This section is the tax preference  
7 performance statement for the tax preferences contained in sections  
8 2, 3, and 4, chapter . . . , Laws of 2023 (sections 2, 3, and 4 of  
9 this act). This performance statement is only intended to be used for  
10 subsequent evaluation of the tax preference. It is not intended to  
11 create a private right of action by any party or be used to determine  
12 eligibility for preferential tax treatment.

13 (2) The legislature categorizes these tax preferences as ones  
14 intended to induce certain designated behavior by taxpayers, improve  
15 industry competitiveness, and create or retain jobs, as indicated in  
16 RCW 82.32.808(2) (a), (b), and (c).

17 (3) It is the legislature's specific public policy objective to  
18 encourage hydrogen fuel product research, development, deployment,  
19 and manufacture in Washington, and to increase the number and wage  
20 level of jobs in this industry.

1 (4) The joint legislative audit and review committee must  
2 evaluate:

3 (a) The number of businesses and employees in this state focused  
4 on hydrogen fuel product research, development, deployment, or  
5 manufacture, including examination of employee wages and benefits;

6 (b) Whether Washington businesses focused on hydrogen fuel  
7 product research, development, and manufacturing in the state have  
8 made advancements in hydrogen fuel product technology, which may  
9 include examination of the number of patents filed with the United  
10 States patent and trademark office, research and development  
11 spending, products delivered to market, and any other metrics deemed  
12 relevant by the committee; and

13 (c) Business and employment changes in hydrogen fuel product  
14 research, development, deployment, and manufacture in Washington  
15 compared with national changes in the industry.

16 (5) In order to obtain the data necessary to perform the review  
17 in subsection (4) of this section, the joint legislative audit and  
18 review committee may access and use any relevant data collected by  
19 the state, including information contained on the annual tax  
20 performance reports and excise tax data submitted to the department  
21 of revenue and employment and wage data submitted to the employment  
22 security department.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04  
24 RCW to read as follows:

25 PREFERENTIAL BUSINESS AND OCCUPATION TAX RATE. (1)(a) Beginning  
26 January 1, 2024, upon every person engaging within this state in the  
27 business of research, development, deployment, or manufacturing  
28 hydrogen fuel products, as to such persons the amount of tax with  
29 respect to such business is, in the case of persons engaged in the  
30 research, development, or deployment or manufacturers, equal to the  
31 value of the product manufactured, or in the case of processors for  
32 hire, equal to the gross income of the business, multiplied by the  
33 rate of 0.2904 percent.

34 (b) Beginning January 1, 2024, upon every person engaging within  
35 this state in the business of making sales of, at retail or  
36 wholesale, or using for research or deployment, hydrogen fuel  
37 products manufactured by the person, as to such persons the amount of  
38 tax with respect to such business is equal to the gross proceeds of  
39 sales, multiplied by the rate of 0.2904 percent.

1 (2) The preferential tax rate authorized under this section  
2 applies only to persons compensating workers at prevailing wage rates  
3 determined by local collective bargaining as determined by the  
4 department of labor and industries. This subsection applies only to  
5 job classifications where prevailing wage rates are available.

6 (3) For purposes of this section, the definitions in this  
7 subsection apply.

8 (a) "Hydrogen" means green electrolytic hydrogen, as defined in  
9 RCW 82.89.010.

10 (b) "Hydrogen electrolyzer" means a technology that uses an  
11 electrochemical reaction to generate hydrogen in any form by  
12 combining water and electricity in the presence of a catalyst.

13 (c) "Hydrogen fuel cell" means a technology that uses an  
14 electrochemical reaction to generate electric energy by combining  
15 atoms of hydrogen and oxygen in the presence of a catalyst.

16 (d) "Hydrogen fuel product" means a hydrogen fuel cell or a  
17 hydrogen electrolyzer.

18 (4) This section expires January 1, 2035.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04  
20 RCW to read as follows:

21 BUSINESS AND OCCUPATION TAX CREDIT FOR HYDROGEN FUEL PRODUCT  
22 RESEARCH AND DEVELOPMENT. (1) In computing the tax imposed under this  
23 chapter, a credit is allowed for each person for qualified hydrogen  
24 fuel product development. For a person who is a researcher,  
25 developer, or manufacturer or processor for hire of hydrogen fuel  
26 products, credit may be earned for expenditures occurring after  
27 January 1, 2024.

28 (2) The credit is equal to the amount of qualified hydrogen fuel  
29 product development expenditures of a person, multiplied by the rate  
30 of 1.75 percent.

31 (3) The credit under this section must be claimed against taxes  
32 due for the same calendar year in which the qualified hydrogen fuel  
33 product development expenditures are incurred. The credit for each  
34 calendar year may not exceed the amount of tax otherwise due under  
35 this chapter for the calendar year. Refunds may not be granted in the  
36 place of a credit.

37 (4) Any person claiming the credit must file an electronic form  
38 prescribed by the department that includes the amount of the credit  
39 claimed, an estimate of the anticipated hydrogen fuel product

1 development expenditures during the calendar year for which the  
2 credit is claimed, an estimate of the taxable amount during the  
3 calendar year for which the credit is claimed, and such additional  
4 information as the department may prescribe. A person whose reporting  
5 period is less than annual must make an adjustment to the total  
6 credit claimed for the calendar year using the person's actual  
7 hydrogen fuel product development expenditures for the calendar year  
8 when the person files its last return for the calendar year for which  
9 the credit is claimed.

10 (5) The credit authorized under this section may only be claimed  
11 by persons compensating each employee engaged in qualified hydrogen  
12 fuel product development at an annualized amount equal to or greater  
13 than 125 percent of the per capita personal income of the county from  
14 which the employee performs a majority of the employee's employment  
15 activity.

16 (6) Credits are available on a first-in-time basis. The  
17 department must disallow any credits, or portion thereof, that would  
18 cause the total amount of credits claimed under this section during  
19 any calendar year to exceed \$3,000,000. If this limitation is  
20 reached, the department must notify all persons claiming the credit  
21 that the annual statewide limit has been met. In addition, the  
22 department must provide written notice to any person who has claimed  
23 tax credits in excess of the limitation in this subsection. The  
24 notice must indicate the amount of tax due and provide that the tax  
25 be paid within 30 days from the date of the notice. The department  
26 may not assess penalties and interest as provided in chapter 82.32  
27 RCW on the amount due in the initial notice if the amount due is paid  
28 by the due date specified in the notice, or any extension thereof.

29 (7) The definitions in this subsection apply throughout this  
30 section.

31 (a) "Hydrogen" and "hydrogen fuel product" have the same meanings  
32 as provided in section 2 of this act.

33 (b) (i) "Hydrogen fuel product development" means:

34 (A) Research, design, and engineering activities performed in  
35 relation to the development, operation, or deployment of hydrogen  
36 fuel products, hydrogen fuel product technology, or of a product line  
37 of hydrogen fuel products, including prototype development, testing,  
38 and certification;

39 (B) The discovery of technological information, the translating  
40 of technological information into new or improved products,

1 processes, techniques, formulas, or inventions, and the adaptation of  
2 existing products into new products; and

3 (C) Tool design and engineering design for the manufacturing  
4 process.

5 (ii) "Hydrogen fuel product development" does not include:

6 (A) Surveys and studies, social science and humanities research,  
7 market research or testing, quality control, sale promotion and  
8 service, computer software developed for internal use, and research  
9 in peripheral areas;

10 (B) Manufacturing activities or other production-oriented  
11 activities; and

12 (C) Activities conducted by less than full-time employees of the  
13 person claiming the credit under this section.

14 (c) "Qualified hydrogen fuel product development" means hydrogen  
15 fuel product development performed within this state.

16 (d) (i) "Qualified hydrogen fuel product development expenditures"  
17 means operating expenses, including wages, compensation of a  
18 proprietor or a partner in a partnership as determined by the  
19 department, benefits, supplies, and computer expenses, directly  
20 incurred in qualified hydrogen fuel product development by a person  
21 claiming the credit provided in this section.

22 (ii) "Qualified hydrogen fuel product development expenditures"  
23 does not include amounts paid to a person or to the state and any of  
24 its departments and institutions to conduct qualified hydrogen fuel  
25 product development; or capital costs and overhead, such as expenses  
26 for land, structures, or depreciable property.

27 (e) "Taxable amount" means the taxable amount subject to the tax  
28 imposed in this chapter required to be reported on the person's tax  
29 returns during the year in which the credit is claimed, less any  
30 taxable amount for which a credit is allowed under RCW 82.04.440.

31 (8) In addition to all other requirements under this title, a  
32 person claiming the credit under this section must file a complete  
33 annual tax performance report with the department under RCW  
34 82.32.534.

35 (9) Credit may not be claimed for expenditures under this section  
36 for which a credit is claimed for the same expenditures under any  
37 other section of this chapter.

38 (10) Credits may be earned for tax reporting periods beginning on  
39 or after January 1, 2024, and before December 31, 2033. Unused credit  
40 may be carried over and claimed against the person's tax liability

1 for the next succeeding calendar year, but may not be carried over  
2 for any calendar year thereafter. No credit may be claimed on tax  
3 returns filed for reporting periods beginning on or after January 1,  
4 2035.

5 (11) To claim a credit under this section a person must  
6 electronically file with the department all returns, forms, and any  
7 other information required by the department, in an electronic format  
8 as provided or approved by the department.

9 (12) This section expires January 1, 2035.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04  
11 RCW to read as follows:

12 BUSINESS AND OCCUPATION TAX CREDIT FOR PROPERTY TAXES. (1) In  
13 computing the tax imposed under this chapter, a credit is allowed for  
14 state and local property taxes and leasehold excise taxes paid during  
15 the calendar year.

16 (2) The credit is equal to:

17 (a) (i) (A) Property taxes paid on buildings, and land upon which  
18 the buildings are located, constructed after July 1, 2023, and used  
19 primarily in manufacturing hydrogen fuel products; and

20 (B) Leasehold excise taxes paid with respect to buildings  
21 constructed after July 1, 2023, the land upon which the buildings are  
22 located, or both, if the buildings are used primarily in  
23 manufacturing hydrogen fuel products; or

24 (ii) Property taxes attributable to an increase in assessed value  
25 due to the renovation or expansion of a building after July 1, 2023,  
26 used primarily in manufacturing hydrogen fuel products; and

27 (b) (i) An amount equal to property taxes paid, by persons taxable  
28 under section 2 of this act, on machinery and equipment exempt under  
29 RCW 82.08.02565 or 82.12.02565 and acquired after July 1, 2023;

30 (ii) For purposes of determining the amount eligible for credit  
31 under (b) (i) of this subsection (2), the amount of property taxes  
32 paid is multiplied by a fraction to be calculated as follows:

33 (A) The numerator of the fraction is the total taxable amount  
34 subject to the tax imposed under section 2 of this act on the  
35 applicable business activities of researching, developing, deploying,  
36 or manufacturing hydrogen fuel products.

37 (B) The denominator of the fraction is the total taxable amount  
38 subject to the tax imposed under all manufacturing classifications in  
39 this chapter.

1 (C) For purposes of both the numerator and denominator of the  
2 fraction, the total taxable amount refers to the total taxable amount  
3 required to be reported on the person's returns for the calendar year  
4 before the calendar year in which the credit under this section is  
5 earned. The department may provide for an alternative method for  
6 calculating the numerator in cases where the tax rate provided in  
7 section 2 of this act for manufacturing was not in effect during the  
8 full calendar year before the calendar year in which the credit under  
9 this section is earned.

10 (D) No credit is available under this subsection (2)(b) if either  
11 the numerator or the denominator of the fraction is zero. If the  
12 fraction is greater than or equal to 0.9, then the fraction is  
13 rounded to one.

14 (3) The credit authorized under this section may only be claimed  
15 by persons compensating workers at prevailing wage rates determined  
16 by local collective bargaining as determined by the department of  
17 labor and industries. This subsection applies only to job  
18 classifications where prevailing wage rates are available.

19 (4) Credits are available on a first-in-time basis. The  
20 department must disallow any credits, or portion thereof, that would  
21 cause the total amount of credits claimed under this section during  
22 any calendar year to exceed \$3,000,000. If this limitation is  
23 reached, the department must notify all persons claiming the credit  
24 that the annual statewide limit has been met. In addition, the  
25 department must provide written notice to any person who has claimed  
26 tax credits in excess of the limitation in this subsection. The  
27 notice must indicate the amount of tax due and provide that the tax  
28 be paid within 30 days from the date of the notice. The department  
29 may not assess penalties and interest as provided in chapter 82.32  
30 RCW on the amount due in the initial notice if the amount due is paid  
31 by the due date specified in the notice, or any extension thereof.

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

34 (a) "Hydrogen" and "hydrogen fuel product" have the same meanings  
35 as provided in section 2 of this act.

36 (b) "Returns" means the tax returns for which the tax imposed  
37 under this chapter is reported to the department.

38 (6) A credit earned during one calendar year may be carried over  
39 to be credited against taxes incurred in subsequent calendar years.  
40 No refunds may be granted for credits under this section.

1           (7) In addition to all other requirements under this title, a  
2 person claiming the credit under this section must file a complete  
3 annual tax performance report with the department under RCW  
4 82.32.534.

5           (8) Credits may be earned for tax reporting periods beginning on  
6 or after January 1, 2024, and before December 31, 2033. Unused credit  
7 may be carried over and claimed against the person's tax liability  
8 for the next succeeding calendar year, but may not be carried over  
9 for any calendar year thereafter. No credit may be claimed on tax  
10 returns filed for reporting periods beginning on or after January 1,  
11 2035.

12           (9) To claim a credit under this section a person must  
13 electronically file with the department all returns, forms, and any  
14 other information required by the department, in an electronic format  
15 as provided or approved by the department.

16           (10) This section expires January 1, 2035.

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