SENATE BILL REPORT
SB 5601

As Reported by Senate Committee On:
Environment, Energy & Technology, February 14, 2025

Title: An act relating to advancing the production and use of alternative jet fuels in Washington.

Brief Description: Advancing the production and use of alternative jet fuels in Washington.

Sponsors: Senators Liias, Stanford, Lovick, Salomon, Goehner, Muzzall, Wagoner, Christian, Lovelett, Nobles, Saldaña, Shewmake and Slatter.

Brief History:

Committee Activity: Environment, Energy & Technology: 2/05/25, 2/14/25 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Directs the Office of Renewable Fuels (Office), subject to appropriation, to develop an Alternative Jet Fuel (AJF) Infrastructure Competitive Grant Program for certain qualifying projects.
- Requires the Department of Ecology (Ecology), subject to appropriation and specified conditions, to explore the development of programmatic environmental impact statements for AJF production pathways.
- Requires the Office to submit a legislative report, by June 1, 2026, relating to the availability of biomethane in Washington, and provide key findings to Ecology.
- Prohibits Ecology from adopting certain Clean Fuels Program rules relating to biomethane, and requires other related rules to be consistent with those adopted in California.
- Adds certain AJF manufacturing operations to the clean energy investment projects Sales and Use Tax Deferral Program, and exempts certain real and personal property used to manufacture AJF from state property and leasehold excise taxes, beginning July 1, 2029.

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.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5601 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Shewmake, Chair; Slatter, Vice Chair; Boehnke, Ranking Member; Dhingra, Harris, Liias, MacEwen, Ramos and Short.

Minority Report: That it be referred without recommendation.

Signed by Senators Lovelett and Wellman.

Staff: Matt Shepard-Koningsor (786-7627)

Background: <u>Alternative Jet Fuels Generally.</u> State law defines alternative jet fuel (AJF), in part, as a fuel that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure. AJF includes jet fuels derived from co-processed feedstocks at a conventional petroleum refinery.

<u>Alternative Jet Fuels Work Group.</u> The Alternative Jet Fuels Work Group (work group) was convened by Washington State University to further the development of AJF as a productive industry in Washington. Membership includes legislators and sectors involved in AJF research, development, production, and utilization. The work group must provide a report including pertinent recommendations to the Governor and Legislature by December 1, 2024, and December 1st of every even-numbered year until December 1, 2028. The work group expires January 1, 2029.

In its 2024 report, the work group provided several recommendations to advance the production and use of AJF, including recommendations to: (1) exempt from state property and leasehold taxes certain machinery, equipment, and other personal property used primarily to manufacture or blend AJF, (2) designate funding from the Climate Commitment Act to establish an AJF program for the purposes of conducting research, development, demonstration, engineering designs, and other AJF infrastructure work, (3) modify the existing Construction Sales and Use Tax Deferral Program for clean energy investment projects to apply to the installation of specified AJF infrastructure, (4) direct and fund the Department of Ecology (Ecology) to complete a study that would inform one or more Programmatic Environmental Impact Statements (PEISs) for AJF production pathways, and (5) direct specified state agencies to engage with their federal counterparts.

<u>Office of Renewable Fuels.</u> In 2022, the Statewide Office of Renewable Fuels (Office) was established within the Department of Commerce (Commerce) to leverage, support, and integrate with other state agencies to carry out specified statutory duties. These duties

include furthering the development and use of AJF as a productive industry in Washington and enhancing resiliency by using renewable fuels, AJF, and green electrolytic hydrogen to support climate change mitigation and adaptation.

Programmatic Environmental Impact Statements. A PEIS is a broad environmental assessment that provides information for future project decisions under the State Environmental Policy Act (SEPA). PEISs look at existing conditions, types of facilities, potential significant environmental impacts, and proposed mitigation to offset any potential impacts. In 2023, the Legislature directed Ecology to prepare PEISs to evaluate potential impacts and mitigation for three types of clean energy facilities under SEPA, including utility-scale solar energy, utility-scale onshore wind energy, and green hydrogen, in addition to co-located battery storage systems with each type of facility. Ecology must complete the three PEISs by June 30, 2025.

Clean Fuels Program. The Clean Fuels Program (CFP) began in 2023, requiring fuel suppliers to gradually reduce the carbon intensity of regulated transportation fuels to 20 percent below 2017 levels by 2034. Carbon intensity is the amount of lifecycle greenhouse gas emissions per unit of energy of fuel. Transportation fuels with a carbon intensity above the annual standard generate deficits and those with a carbon intensity below the standard generate credits. AJF and biomethane are opt-in fuels under the CFP, meaning an entity producing those fuels may generate credits in the CFP.

2023 legislation directed Ecology to, among other things, allow biomethane to be claimed as a feedstock for renewable diesel and AJF, and to notify the Department of Revenue (DOR) when one or more facilities capable of producing a cumulative production capacity of at least 20 million gallons of AJF each year are operating in the state.

Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. Some other local government entities and special purpose districts also impose sales and use taxes for specific purposes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Sales and Use Tax Deferral for Clean Energy Investment Projects. In 2022, the Legislature enacted a Retail Sales and Use Tax Deferral Certificate Program for clean energy investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

To be eligible, a project must have at least $2 million in new, renovated, or expanded:

- manufacturing operations for property exclusively used to generate zero-emission

vehicles, charging and fueling infrastructure for zero-emission vehicles, renewable and green electrolytic hydrogen, renewable hydrogen carriers, certain clean fuels, or electricity from renewable sources;
- equipment used in the storage of electricity generated by renewable resources;
- production facilities for clean fuel or renewable and green electrolytic hydrogen; or
- facilities to store electricity generated from renewable sources.

Deferred taxes must begin to be repaid two years after project completion, and annually for nine subsequent years. Annual payments are 10 percent of the deferred taxes. One hundred percent of local retail sales and use taxes must be repaid. The deferral recipient may receive a reduction of the state sales and use tax as follows:
- 50 percent reduction if the Department of Labor and Industries (L&I) certifies that the project includes procurement and contracts with women, minority, or veteran owned businesses, and entities that have a history of complying with federal and state wage and hour laws, apprenticeship utilization, and preferred entry workers living in the project construction area;
- 75 percent reduction if, in addition to meeting the 50 percent standard, the project compensates workers at prevailing wages determined by local collective bargaining; or
- 100 percent reduction if L&I certifies that the project is developed under a community workforce agreement or project labor agreement.

<u>Property Tax.</u> All real and personal property in the state is subject to property tax each year based on its value, unless a specific exemption is provided by law. The Washington Constitution limits regular property tax levies to a maximum of 1 percent of the property's value. Excess levies are not subject to this constitutional limit and require voter approval. There are statutory rate maximums for individual taxing districts and aggregate rate maximums to keep the total tax rate of regular property taxes within the constitutional limit.

The state collects two regular property tax levies for common schools. The original state levy was first imposed when Washington achieved statehood in 1889. In 2017, the Legislature created a second state levy. For taxes levied for collection in calendar years 2018, 2020, and 2021, the combined rate for both state levies is $2.70 per $1,000 of assessed value. For taxes levied for collection in calendar year 2019, the combined rate for both state levies is $2.40 per $1,000 assessed value. The revenue growth limit does not apply to the state levies during this time. Beginning with taxes levied for collection in calendar year 2022 and thereafter, the revenue growth limit applies to both levies and the rate is calculated based on the total levy amount.

All regular levies, except the state levies, are subject to a statutory revenue growth limit. If the taxing authority has a population of 10,000 or more, the revenue growth limit is the lesser of inflation or 1 percent plus the valuation of new construction. If the taxing authority has a population of less than 10,000, the revenue growth limit is 1 percent plus the value of new construction.

Leasehold Excise Tax. Leasehold excise tax (LET) is paid by a private entity that leases or uses public property under current law. This includes leases of government-owned property exempt from property taxes. The combined state and local rate for LET is 12.84 percent of the rent paid for the property. The state general fund receives 6.84 percent and the remaining 6 percent goes to local governments.

Tax Preference Performance Statement. All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives of the tax preference and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference. An automatic ten-year expiration date is applied to new tax preferences if an alternative expiration date is not provided in the legislation.

Summary of Bill (First Substitute): Alternative Jet Fuels Grant Program. Subject to appropriation, the Office must develop an AJF Infrastructure Competitive Grant Program (Grant Program) to support research, development, demonstration, engineering designs, production facilities, and blending and use of AJF infrastructure. Grant Program funds may be used for AJF infrastructure planning, engineering, design, research, development, demonstration, and construction. Grant Program funds may be used to contribute to matching funds for federal, state, or local requests for AJF infrastructure proposals, but must not be used for land acquisition or permitting costs. Qualifying projects may include, but are not limited to:

- rail spurs;
- barging infrastructure;
- fuel loading and offloading racks; and
- installation of blending facilities, including tanks, pipes, pumps, and mixing equipment.

Infrastructure built with Grant Program funding is intended to be for the public good. Grant Program recipients must not restrict access to infrastructure. As practicable, Commerce must support Grant Program recipients with their efforts siting projects and related planning in ways that may support the siting and permitting process. Beginning January 1, 2026, Commerce must annually report to the Governor and Legislature on projects selected for funding and project status.

Programmatic Environmental Impact Statements. Subject to appropriation and specified requirements, Ecology must explore the development of one or more PEISs for AJF production pathways in accordance with those developed for utility-scale solar energy, utility-scale onshore wind energy, and green hydrogen. A PEIS must only be developed for AJF production pathways producing AJF that has at least 50 percent less carbon dioxide equivalent emissions compared to conventional petroleum jet fuel.

By June 30, 2027, Ecology must submit a legislative report with an update on any PEISs developed for AJF production pathways.

Biomethane Availability and the Clean Fuels Program. By June 1, 2026, the Office, in consultation with Ecology and the work group, must submit a report to the Governor and Legislature on the availability of biomethane, identifying, at a minimum:

- the availability of biomethane as a feedstock for AJF within the state, including whether biomethane availability is sufficient to support the statutory goal of one or more facilities in the state producing at least 20 million gallons of AJF each year;
- the effect on biomethane availability if eligibility is limited to transport on pipelines that flow toward fuel production facilities in the state at least 50 percent of the time;
- alternative approaches to incentivize biomethane production in the state and ensure the state benefits from such production; and
- the CFP credit prices and crediting periods required to incentivize capture of fugitive methane to produce biomethane.

The Office must provide key findings to Ecology to help inform future rulemaking under the CFP. Ecology must not adopt, by rule, restrictions relating to pipeline flow or geographic origin of biomethane claimed as a feedstock to product AJF. Any rules Ecology adopts relating to the limitation of the crediting periods for the voluntary capture of methane associated with biomethane claimed as a feedstock to produce AJF must be consistent with similar rules adopted in California.

Tax Preferences. *Sales and Use Tax Deferral.* Beginning July 1, 2029, the sales and use tax deferral for clean energy projects is expanded to include personal property exclusively incorporated as an ingredient or component of, or used in the generation of AJF, including fueling infrastructure, as defined.

Property and Leasehold Excise Tax Exemptions. Beginning July 1, 2029, certain buildings, machinery, equipment, and other personal property used primarily to manufacture or blend AJF are exempt from state property taxes and LETs (tax exemptions). The tax exemptions apply to facilities manufacturing or blending AJF that has at least 50 percent less carbon dioxide equivalent emissions than conventional petroleum jet fuel. An application and verification process is outlined. Once properly filed, the exemption is valid for ten assessment years. DOR may adopt rules to administer the tax exemptions. The tax exemptions only apply to taxes levied by the state, but a local taxing district may authorize the same exemption for any facility located within its taxing jurisdiction if it meets the same requirements provided.

Performance Statement. A tax preference performance statement is provided for the tax preferences contained above. The Joint Legislative Audit and Review Committee must complete a preliminary report by December 1, 2032.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY &

TECHNOLOGY COMMITTEE (First Substitute):

- Clarifies that Commerce must support grant recipients with their efforts siting projects and related planning in ways that may support the siting and permitting process for AJF.
- Requires the Office to report on biomethane availability rather than Ecology, and directs the Office to consult with, and provide key findings to, Ecology to help inform future CFP rulemaking.
- Specifies that a PEIS for AJF production pathways may include blending and distribution infrastructure.
- Provides that a PEIS must only be developed for AJF production pathways producing AJF that has a 50 percent less carbon dioxide equivalent emissions than conventional jet fuel.
- Requires Ecology to submit a legislative report on any developed AJF PEISs by June 30, 2027.
- Modifies the proposed prohibition against Ecology adopting certain rules relating to biomethane claimed as a feedstock under the CFP, to: (1) prohibit Ecology from adopting rules relating to pipeline flow or geographic origin of biomethane, rather than prohibiting these rules until after the biomethane availability report is completed, and (2) require any rules Ecology adopts relating to certain CFP crediting periods to be consistent with similar rules adopted in California.
- Provides that the bill's tax preferences take effect July 1, 2029, rather than 90 days after adjournment of the legislative session, and extends the expiration dates accordingly.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Washington has 200,000 jobs associated with the aerospace industry, so when we talk about sustainable aviation fuel (SAF) we have a stake both as a state that builds airplanes, and as one that cares about climate action and making sure neighborhoods, adjacent to airports breathe clean air. The bill refines tax treatment of these projects to try and incentivize the development of new SAF technology, and it tries to target Climate Commitment Act funding to help develop this industry. The bill also targets biomethane as a feedstock for SAF, and we want to have consistent regulations to other jurisdictions on this topic.

The air industry is 2.5 percent of global emissions, and that could triple by 2050 if we do not do something about it. SAF is important because it is the only realistic way that aviation, at least large aircraft, will decarbonize. SAF production in Washington is important because it contributes to energy independence, improves local air quality near airports, and delivers significant economic benefits for the state. Washington is a trailblazer when it comes to SAF, but we do not have a SAF facility yet. The grant program in this bill could go a long way to help SAF production. This program is an attainable step toward decarbonizing this industry. SAF makes up less than 1 percent of total available jet fuel today and has a price of at least two times higher than conventional jet fuel making it cost-prohibitive and hard to acquire. Producers are often incentivized to produce renewable diesel instead of SAF, and this bill would help alleviate that. We believe there is an important role for biomethane to play as we decarbonize aviation.

CON: There is no viable path forward with biofuel replacement for jet engines and it will not reduce our state's carbon emissions. This is a proposal for subsidizing private industry and private flyers who use this mode of transportation frequently. Our state does not have the money for this policy.

OTHER: Ecology is currently undergoing rulemaking to make technical improvements to the CFP, including changing requirements for book-and-claim accounting to better incentivize more methane capture and bio-methane production. This bill would prohibit addressing this topic until a study has been completed, which will postpone for multiple years Ecology's ability to align future market incentives with CFP goals. The biomethane section of the bill would short circuit the robust public process by rewriting a CFP section. We request the section be removed. The PEIS process does not make sense for diverse industrial facilities like AJF producers, including oil refineries. SAF carries no obligation under the CFP and further privileging an opt-in fuel detracts from the on-road pollution reductions we desperately need as well.

Persons Testifying: PRO: Senator Marko Liias, Prime Sponsor; Mike Fong, Snohomish County; Isaac Kastama, Clean & Prosperous Washington; Lilly Hayward, Seattle Metropolitan Chamber of Commerce; Scott Kennedy, Alaska Airlines; Sean Newsum, Airlines for America; Derek Phelps, Twelve; John Flanagan, Port of Seattle; Chris Herman, Washington Public Ports Association; Ender Reed, Neste US, Inc.; Yanni Psareas, The Coalition for Renewable Natural Gas; Darrin Morgan, SkyNRG.

CON: Anne Kroeker, 350 Seattle member.

OTHER: Joel Creswell, Washington State Department of Ecology; Leah Missik, Climate Solutions; Caitlin Krenn, Washington Conservation Action.

Persons Signed In To Testify But Not Testifying: No one.