
SENATE BILL 6335

State of Washington

65th Legislature

2018 Regular Session

By Senators Hobbs and Saldaña

Read first time 01/12/18. Referred to Committee on Energy,
Environment & Technology.

1 AN ACT Relating to creating a fossil fuel carbon pollution tax;
2 adding a new chapter to Title 82 RCW; creating a new section;
3 repealing RCW 19.29A.060; and providing a contingent expiration date.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Coal" means bituminous coal, subbituminous coal, lignite,
9 and coke.

10 (2) "First taxable event" means:

11 (a) The first possession of natural gas acquired by a gas
12 distribution business;

13 (b) The first possession of natural gas acquired by a person
14 subject to the tax under RCW 82.12.022 with respect to such natural
15 gas;

16 (c) The first possession of coal acquired by a person using the
17 coal for the generation of electricity, heat, or steam within the
18 state of Washington;

19 (d) The first possession of a petroleum product subject to tax
20 under chapter 82.21 RCW; and

1 (e) The use of fossil fuels by a facility in Washington that
2 results in carbon dioxide emissions in conjunction with the process
3 of distilling, fractionating, refining, or processing of crude oil or
4 petroleum products.

5 (3) "Fossil fuel" means coal, natural gas, crude oil, and
6 petroleum products.

7 (4) "Gas distribution business" has the same meaning as provided
8 in RCW 82.16.010.

9 (5) "Petroleum product" has the same meaning as provided in
10 RCW 82.21.020.

11 (6) "Qualified sequestration" means sequestration qualified for
12 credit pursuant to RCW 80.70.020 or in accordance with a method
13 established by the department of commerce, in consultation with the
14 department of ecology.

15 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (3)
16 of this section, there is levied and imposed, at the time of the
17 first taxable event and upon the first taxable person within this
18 state, a fossil fuel carbon pollution tax upon the carbon content of
19 fossil fuels extracted, manufactured, or introduced into this state.

20 (a) Beginning January 1, 2019, the tax rate is equal to fifteen
21 dollars per metric ton of carbon dioxide.

22 (b) Beginning January 1, 2024, the tax rate is equal to twenty
23 dollars per metric ton of carbon dioxide.

24 (2) The department must calculate the carbon content of fossil
25 fuels, in consultation with the department of ecology, by using
26 relevant methods based on those established by the United States
27 department of energy or the United States environmental protection
28 agency. The department must develop and make available worksheets and
29 guidance documents necessary to calculate the carbon content of
30 fossil fuels.

31 (3)(a) A supplier of fossil fuels is not responsible for payment
32 of the tax associated with fossil fuels directly or eventually
33 supplied to an entity as provided in section 3 of this act.

34 (b) A supplier of fossil fuels is not responsible for payment of
35 the tax associated with fossil fuels directly or eventually supplied
36 to a light and power business for purposes of generating electricity.
37 A light and power business must pay the tax on fossil fuels used to
38 generate electricity that is sold to Washington customers.

1 (i) The tax on electricity must be paid by the light and power
2 business when it sells electricity for end use. Sales by a light and
3 power business for subsequent resale are not subject to the tax. If a
4 person consumes electricity for which the tax has not been paid by a
5 light and power business including, but not limited to, electricity
6 consumed by a direct service industrial customer, then the person
7 must pay the tax directly to the department.

8 (ii) The department may not impose the tax on electricity from
9 combined heat and power, and must instead impose the tax at the time
10 of the first taxable event and upon the first taxable person within
11 this state.

12 (4) The tax levied under this section is imposed only once with
13 respect to the same fossil fuel or electricity generated from fossil
14 fuels.

15 (5)(a) No state agency may adopt or enforce a statewide program
16 that sets a greenhouse gas emissions standard, limit, cap, or charge
17 except as provided in this chapter.

18 (b) As of the effective date of this section, chapter 173-442 WAC
19 (the clean air rule) and associated amendments to chapter 173-441 WAC
20 previously adopted by the department of ecology may not be enforced
21 by the department of ecology. Nothing in this subsection
22 acknowledges, establishes, or creates legal authority for the
23 department of ecology or any other state agency to enact, adopt,
24 order, or in any way implement a rule or policy establishing a
25 statewide limit, cap, or standard to control the amount of greenhouse
26 gas emissions occurring during a period of time.

27 (6) The carbon pollution tax must be reduced or refunded to the
28 extent that the person who paid the tax can demonstrate that the
29 fossil fuels or electricity in respect to which the tax was paid did
30 not contribute to increasing the atmospheric carbon dioxide
31 concentration by reason of qualified sequestration or such other
32 reason as may be provided by rule adopted by the department of
33 commerce in consultation with the department of ecology. The right to
34 a carbon pollution tax refund or reduction under this subsection may
35 not be transferred, traded, or banked.

36 NEW SECTION. **Sec. 3.** (1) The tax levied and imposed under
37 section 2 of this act does not apply to:

38 (a) Fossil fuels used for air or marine travel between Washington
39 and a jurisdiction outside the geographic borders of Washington;

1 (b) Fossil fuels purchased in Washington for export for use
2 outside of Washington. Export to a federally recognized Indian tribal
3 reservation located within this state is not considered export
4 outside of Washington;

5 (c) Fossil fuels brought into this state by means of the fuel
6 supply tank of a motor vehicle, vessel, locomotive, or aircraft;

7 (d) Fossil fuels that the state is prohibiting from taxing under
8 the Constitution of this state or the Constitution or laws of the
9 United States;

10 (e) Biofuels or the biofuel component of blended fuels. For
11 purposes of this subsection, "biofuel" includes, but is not limited
12 to, biodiesel, biomethane, ethanol, and ethanol blend fuels and
13 renewable liquid natural gas or liquid compressed natural gas made
14 from biogas;

15 (f) Motor vehicle fuel and special fuel exempt from taxation
16 under RCW 82.38.080;

17 (g) Diesel fuel or aircraft fuel sold or used solely for
18 agricultural purposes by a farm fuel user, as those terms are defined
19 in RCW 82.08.865, or as part of an off-road forestry operation;

20 (h) Fuel sold or used for the purpose of public transportation
21 and for which the purchaser is entitled to a refund under
22 RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b);

23 (i) Fuel that is sold or used by a private, nonprofit
24 transportation provider certified under chapter 81.66 RCW and for
25 which the purchaser is entitled to a refund under RCW 82.38.080(1)
26 (f) and (g) or 82.38.180(3)(b);

27 (j) Fuel sold or used by the Washington state ferry system for
28 use in a state-owned ferry;

29 (k) Fuel sold or used for school buses, as defined in and
30 consistent with the requirements of RCW 46.04.521;

31 (l) Fossil fuels and electricity sold to or used by any business
32 described in RCW 82.04.260(12);

33 (m) The portion of fuels or electricity derived from wood, wood
34 waste, wood by-products, wood residuals, and agricultural residues;
35 and

36 (n)(i) Fossil fuels and electricity sold to or used by an energy-
37 intensive trade-exposed business as identified by the department of
38 commerce.

39 (ii) The department of commerce will establish objective
40 numerical criteria for both energy intensity and trade exposure for

1 the purpose of identifying energy-intensive trade-exposed businesses.
2 The criteria will take into consideration approaches used by other
3 jurisdictions with existing carbon reduction or carbon pricing
4 programs, and the impact of the carbon pollution tax on manufacturing
5 activity, including manufacturers with a 2017 North American industry
6 classification system code 31-33 as developed by the office of
7 management and budget. A business that can demonstrate to the
8 department of commerce that it meets the criteria must be issued a
9 certificate denoting energy-intensive trade-exposed exempt status.

10 (iii) Notwithstanding the criteria established in this subsection
11 (1)(n)(ii), the department must issue a certificate denoting energy-
12 intensive trade-exposed exempt status to a business with a proper
13 primary North American industry classification system code based on
14 the following activities:

15 112310: Chicken egg production

16 112320: Broilers and other meat type chicken production

17 112330: Turkey production

18 112340: Poultry hatcheries

19 112390: Other poultry production

20 311211: Flour milling

21 311221: Wet corn milling

22 311224: Soybean and other oilseed processing

23 311225: Fats and oils refining and blending

24 311230: Breakfast cereal manufacturing

25 311411: Frozen fruit, juice, and vegetable manufacturing

26 311412: Frozen specialty food manufacturing

27 311421: Fruit and vegetable canning

28 311422: Specialty canning

29 311423: Dried and dehydrated food manufacturing

30 311511: Fluid milk manufacturing

31 311512: Creamery butter manufacturing

32 311513: Cheese manufacturing

33 311514: Dry, condensed, evaporated, dairy product manufacturing

34 311520: Ice cream and frozen dessert manufacturing

35 311611: Animal (except poultry) processing

36 311612: Meat processed from carcasses

37 311613: Rendering and meat by-product processing

38 311615: Poultry processing

39 311710: Seafood product preparation and packaging

40 311812: Commercial bakeries

1 311821: Cookie, cracker manufacturing
2 311824: Flour mixes and dough manufacturing from purchased flour
3 311830: Tortilla manufacturing
4 311911: Roasted nuts and peanut butter manufacturing
5 311919: Other snack food manufacturing
6 311930: Flavoring syrup and concentrate manufacturing
7 311941: Mayonnaise, dressing, and other prepared sauce
8 manufacturing
9 311942: Spice and extract manufacturing
10 311991: Perishable prepared food manufacturing
11 311999: All other miscellaneous food manufacturing
12 312112: Bottled water manufacturing
13 322110: Pulp mills
14 322121: Paper (except newsprint) mills
15 322122: Newsprint mills
16 322130: Paperboard mills
17 324110: Petroleum refineries
18 325188: All other basic inorganic chemical manufacturing
19 325199: All other basic organic chemical manufacturing
20 325311: Nitrogenous fertilizer manufacturing
21 327211: Flat glass manufacturing
22 327213: Glass container manufacturing
23 327310: Cement manufacturing
24 327410: Lime manufacturing
25 327420: Gypsum product manufacturing
26 331111: Iron and steel mills
27 331312: Primary aluminum production
28 331315: Aluminum sheet, plate, and foil manufacturing
29 334413: Semiconductor and related device manufacturing
30 336411: Aircraft manufacturing
31 336413: Other aircraft parts and auxiliary equipment
32 manufacturing; or any business described in RCW 82.04.260(12).

33 (2) Any reductions to the fossil fuel carbon pollution tax rates
34 due under this section may not be considered a credit and may not be
35 transferred, traded, or banked.

36 NEW SECTION. **Sec. 4.** (1) The carbon pollution revenues account
37 is created in the state treasury. All receipts from the tax imposed
38 under section 2 of this act must be deposited in the account. Moneys
39 in the account may be spent only after appropriation.

1 (2) Expenditures from the account may be used for the following
2 activities:

3 (a) Not less than forty percent must be transferred to the
4 multimodal account for programs that reduce pollution from
5 transportation sources, reduce congestion, and improve mobility;

6 (b) Not less than twenty percent must be expended by the
7 department of commerce for programs that advance clean energy
8 technologies and energy efficiency. Appropriations to the department
9 for this purpose may include, but are not limited to:

10 (i) Projects that provide a benefit to the public through
11 development, demonstration, and deployment of clean energy
12 technologies that save energy and reduce energy costs, reduce harmful
13 air emissions, or otherwise increase energy independence for the
14 state. In funding such projects, the department must be guided by the
15 project selection procedures and standards required by the capital
16 budget in section 1028, chapter 3, Laws of 2015 3rd sp. sess. (Second
17 Engrossed House Bill No. 1115);

18 (ii) Community energy efficiency programs that provide assistance
19 for energy efficiency assessments and retrofits, with an emphasis
20 upon residential housing serving moderate-income and low-income
21 families;

22 (iii) Projects that sequester carbon, or result in buildings
23 constructed of newly emerging alternative building materials that
24 result in a lower carbon footprint in the built environment over the
25 life cycle of the building and the component building materials;

26 (iv) Projects that increase the energy efficiency or reduce the
27 greenhouse gas emissions at manufacturing facilities;

28 (v) Projects that achieve energy efficiency and emissions
29 reductions in the agricultural sector including fertilizer
30 management, soil management, bioenergy, and biogas; and

31 (vi) Projects aiding full or partial fuel switching to
32 electricity or fuels not derived from fossil fuels; converting
33 private and public fleets, including transit fleets and school buses,
34 to zero-emission vehicles; and improving freight mobility systems;

35 (c) Not less than twenty percent must be expended for project-
36 specific planning, design, and construction projects that reduce
37 stormwater impacts from existing infrastructure and development.
38 Grants must be made available to public and private entities for
39 projects that reduce stormwater impacts from existing infrastructure
40 and development, where there is a substantial water quality benefit

1 and the project is not required by court order or required as a
2 condition of a local or state permit;

3 (d) Not less than five percent must be expended by the department
4 of transportation for fish barrier correction projects at state
5 highways required by the injunction entered in *United States v.*
6 *Washington* (Civ. No. CV9213RSM). Where the department determines that
7 the amounts appropriated exceed the current biennial appropriation
8 necessary to meet the overall timeline for compliance with the
9 injunction, the department may provide funding for fish barrier
10 correction projects on state or local roadways, with the highest
11 priority for funding to be accorded to projects with the greatest
12 restoration of fish habitat access. In making awards for projects not
13 subject to the injunction the department must obtain the
14 recommendations of the fish passage barrier removal board created in
15 RCW 77.95.160;

16 (e) Not less than ten percent must be expended for forest fire
17 prevention and suppression and forest management activities. Of these
18 funds:

19 (i) Not less than fifty percent must be expended for increasing
20 the department of natural resources' capacity for fire prevention and
21 suppression and forest management;

22 (ii) Not less than twenty-five percent for grants or contracts to
23 other entities including cities, counties, and tribal governments for
24 their activities in fire prevention or suppression; and

25 (iii) Not less than twenty-five percent transferred to the
26 military department solely for national guard fire prevention and
27 suppression; and

28 (f) Not less than five percent must be expended for activities at
29 the state department of commerce to benefit rural economic
30 development.

31 NEW SECTION. **Sec. 5.** (1) The fossil fuel carbon pollution tax
32 imposed under this chapter is to be collected in addition to all
33 other taxes imposed on fossil fuels.

34 (2) To the extent practical, the department must integrate the
35 administration and collection of the fossil fuel carbon pollution
36 taxes imposed under this chapter with the administration and
37 collection of other taxes imposed on the taxpayer. The administrative
38 provisions of chapter 82.32 RCW apply to this chapter.

1 NEW SECTION. **Sec. 6.** (1) By December 31, 2023, and in
2 compliance with RCW 43.01.036, the joint legislative audit and review
3 committee, in consultation with the department of revenue, the
4 department of commerce, and the department of ecology, must conduct a
5 review of the tax imposed under section 2 of this act to be submitted
6 to the governor and the appropriate committees of the legislature.

7 (2) The review under this section must include, but is not
8 limited to, an analysis of any net economic impacts on job creation
9 or economic activity that may have been directly or indirectly
10 attributable to this tax, the impact of the tax, if any, on total
11 greenhouse gas emissions, considering both in-state emissions and
12 emissions associated with economic activity occurring outside the
13 state where avoidance of this tax is a possible factor, and the
14 impact of the tax on consumers of energy in Washington, including the
15 proportion of the impact on low-income households. The report must
16 evaluate the effectiveness in the use of revenues to reduce and
17 mitigate the impact of greenhouse gas emissions.

18 NEW SECTION. **Sec. 7.** RCW 19.29A.060 (Fuel mix disclosure—
19 Electricity product categories—Disclosure format) and 2000 c 213 s 4
20 are each repealed.

21 NEW SECTION. **Sec. 8.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 9.** The provisions of RCW 82.32.805 and
26 82.32.808 do not apply to this act.

27 NEW SECTION. **Sec. 10.** Sections 1 through 6 of this act
28 constitute a new chapter in Title 82 RCW.

29 NEW SECTION. **Sec. 11.** (1) If the United States government
30 adopts by statute or rule a charge, tax, regulatory limit, or
31 standard upon the emission of greenhouse gases that is imposed
32 broadly upon those persons subject to the state tax in section 2 of
33 this act, this act expires on the date that such federal statute or
34 rule is adopted.

1 (2) If an initiative measure by the people creates a charge, tax,
2 regulatory limit, or standard upon the emission of greenhouse gases
3 that is imposed broadly upon those persons subject to the state tax
4 imposed under section 2 of this act, this act expires on the earliest
5 date that any section of the initiative measure creating such a
6 charge, tax, regulatory limit, or standard takes effect.

7 (3) The department must provide written notice of the expiration
8 date of this act to affected parties, the chief clerk of the house of
9 representatives, the secretary of the senate, the office of the code
10 reviser, and others as deemed appropriate by the department.

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