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**HOUSE BILL 1534**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Shewmake, Lekanoff, Santos, and Pollet

AN ACT Relating to establishing a carbon pollution tax that recognizes the nature of energy-intensive, trade-exposed industries; and adding a new chapter to Title 82 RCW.

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

NEW SECTION. **Sec.**  The legislature intends to create cost-effective climate policy that recognizes the special nature of energy-intensive, trade-exposed industries. The legislature further intends to encourage these industries to continue to innovate, find new ways to be more energy efficient, use lower carbon products, and be positioned to be global leaders in a low carbon economy, while also recognizing that overly burdensome regulation or taxation could result in perverse consequences and potentially increase overall carbon pollution.

An economy-wide carbon tax is one of the most cost-effective methods to reduce greenhouse gas emissions, but may have unintended consequences in certain sectors. To mitigate these impacts this act will, in tandem with chapter . . ., Laws of 2021 (House Bill No. 1513), create incentives to reduce carbon pollution while recognizing the unique nature of energy-intensive, trade-exposed industries.

NEW SECTION. **Sec.**  The definitions in section 2, chapter . . ., Laws of 2021 (House Bill No. 1513) and this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of revenue.

(2) "EITE facility" means a manufacturing business that meets the criteria established by the department of commerce in section 5 of this act.

(3) "Presumptive emissions" means the emissions that a facility is expected to emit given its output and current standards of technology.

NEW SECTION. **Sec.**  The carbon tax benefits account is created in the state treasury. All receipts from the tax levied and collected under section 4 of this act on fossil fuels consumed by EITE facilities must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the purposes of implementing the working families tax exemption established in RCW 82.08.0206 and for workforce transition investments.

NEW SECTION. **Sec.**  (1)(a) Beginning July 1, 2022, a carbon pollution tax is imposed on the sale or use within this state of all fossil fuels by EITE facilities.

(b) The measure of the carbon pollution tax is the carbon dioxide equivalent emissions:

(i) Resulting from the complete combustion or oxidation of fossil fuels sold or used by the EITE facility within this state; and

(ii) From the entire life cycle of the fossil fuel.

(2)(a) The tax rate as of July 1, 2022, is equal to $25 per metric ton of greenhouse gas emissions. The department and EITE facilities must measure greenhouse gas emissions for each type and unit of fossil fuel consistent with subsection (3) of this section. The tax rate annually increases automatically each July 1st thereafter by five percent, and is adjusted for inflation using the consumer price index.

(b) As of January 1, 2030, if the department of ecology, based on data collected by the department on total fuels subject to the tax in (a) of this subsection in the previous year, determines that the sources of emissions covered by the tax are not predicted to achieve their combined share of the emissions reductions necessary for the state to achieve the emissions limits established in RCW 70A.45.020, the tax rate established in (a) of this subsection must increase by $10 beginning July 1, 2031. Each year thereafter, the tax rate must continue to increase by five percent each year plus inflation, with an additional annual increase of $2 each year until the department of ecology determines that the sources of emissions covered by the tax are expected to meet the limits established in RCW 70A.45.020, at which point the additional $2 per year increase is retired, and the annual rate of increase returns to five percent plus inflation. Every two years between the years 2030 and 2050, the department, in consultation with the department of ecology, must reevaluate the necessary tax rate to ensure the state achieves a goal of net zero emissions by 2050. The department of ecology must make the determinations required under this subsection and notify the department by April 1st of each odd-numbered year. If the output adjusted emissions of an EITE facility meet the percentage reductions established in RCW 70A.45.020 as compared to 1990 average output adjusted emissions, then the additional annual increases are not applied to that EITE facility.

(3) The department must determine the tax in each case by applying a carbon calculation using methodologies adopted by the department of ecology as follows:

(a) For any fuels used to refine fossil fuels by an EITE facility, the department of ecology must adopt by rule criteria for making the carbon calculation in consultation with the department. The department of ecology must consider, among other information, the reports filed under section 11 of this act. Among other resources, the department of ecology must consider greenhouse gas content measurements for fossil fuels from the United States energy information administration or the United States environmental protection agency;

(b) For all other fuels sold or used in Washington by an EITE facility, the department of ecology, in consultation with the department, must adopt by rule criteria for making the carbon calculation; and

(c) The department of ecology may require additional information from sources as necessary, in consultation with the department of commerce, for determining the carbon calculation under this chapter.

(4) For the purposes of this chapter, the carbon pollution tax is imposed upon EITE facilities that are taxable persons under RCW 82.32.030(1):

(a) Only once with respect to the same unit of fossil fuel or electric energy;

(b) At the time and place of the first event within this state in which the tax is applicable, occurring on or after the effective date of this section, regardless of whether the fossil fuel was previously sold, used, or consumed within this state before the effective date of this section;

(c) Upon the first EITE facility within this state upon which the tax would be applicable, for fossil fuels sold by one EITE facility to another EITE facility;

(d) For greenhouse gases emanating into the atmosphere as a result of the consumption of fuels in refineries, in accordance with the requirements of section 11 of this act; and

(e) In accordance with and at the intervals provided in chapters 82.08 and 82.12 RCW.

(5) Motor vehicle fuel and special fuel used on the property of an EITE facility but which are not counted towards EITE facility operations for purposes of greenhouse gas emissions reporting under chapter 70A.15 RCW are not subject to the tax imposed under this chapter, and are instead subject to the tax imposed in chapter . . ., Laws of 2021 (House Bill No. 1513).

(6) The carbon pollution tax created in this section is imposed on the sale or use of natural gas as follows:

(a) Natural gas transported through the state that is not produced or delivered in the state to an EITE facility is exempt from the carbon pollution tax. Natural gas possessed or stored in this state is exempt from the carbon pollution tax unless the tax is otherwise applicable under (b) or (c) of this subsection (6);

(b) For natural gas sold by a gas distribution business to an EITE facility that is a retail customer in the state, the carbon pollution tax is imposed on the EITE facility upon the sale or consumption of such natural gas by the EITE facility; and

(c) For natural gas sold to an EITE facility that is a direct access gas customer in the state, the carbon pollution tax is imposed on the direct access gas customer upon the sale or consumption of such natural gas by the EITE facility.

(7)(a) The carbon pollution tax may not be applied to the sale or use of any fossil fuels upon which the tax created in this section has been previously imposed.

(b) A sale of fossil fuel takes place in the state when the fossil fuel is delivered to a purchaser or a person designated by the purchaser, notwithstanding any contract terms designating a location outside of this state as the place of sale.

(c) All sales within this state of a fossil fuel subject to the carbon pollution tax must document the amount of carbon pollution tax paid in accordance with rules adopted by the department.

(8) For EITE facility taxpayers who are also subject to any of the taxes imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW, the frequency of reporting and payment of the carbon pollution tax must, to the extent practicable and unless otherwise provided in this section, coincide with a taxpayer's reporting periods for the taxes imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW.

(9)(a) The department must adopt rules necessary to implement the carbon pollution tax created in this section. The department must develop and make available worksheets and guidance documents necessary to calculate the carbon pollution tax for various fuels. The department must adopt rules and provide forms with respect to reporting the sale or use of each type of fossil fuel used by EITE facilities. EITE facilities subject to the tax imposed under this section must provide to the department information regarding the sale or use of fuel consistent with the requirements adopted by the department.

(b) All taxable sales within this state of a fossil fuel must document the amount of carbon pollution tax paid in accordance with rules adopted by the department.

(c) Persons subject to the tax imposed under this section must provide accounting and reporting to the department relating to how the costs of the carbon pollution tax obligation are passed on to consumers.

NEW SECTION. **Sec.**  (1)(a) Until July 1, 2030, a credit may be taken against the tax imposed under section 4 of this act in an amount equal to the amount of the tax attributable to 70 percent of an EITE facility's greenhouse gas emissions in 2019 plus any amounts specified in section 7 of this act, determined as provided in this section. For new EITE facilities that begin activities after January 1, 2020, but before January 1, 2030, or if presumptive emissions calculations are available before 2030 and larger than 2019 emissions, the facility may take a credit equal to 70 percent of the EITE facility's presumptive greenhouse gas emissions plus any amounts specified in section 7 of this act, as determined by the department of ecology, or emissions for the most recent year for which actual greenhouse gas emissions are available. The purpose of the credit is to mitigate the risk of leakage of emissions from within the state to instead occur beyond the borders of the state, to support the competitiveness of the state's energy-intensive, trade-exposed industries, and to provide assistance to such businesses to achieve greater energy efficiency and implement lower carbon manufacturing processes.

(b) Beginning July 1, 2030, the department must adjust the amount of credit that may be claimed by each EITE facility so that the EITE facility may claim any amounts specified in section 7 of this act plus credits to offset 70 percent of the lesser of either:

(i) The greenhouse gases attributable to a best in class facility creating the same industrial output, as determined by the department of ecology; or

(ii) The emissions the department of ecology determines the facility would produce if all life-cycle cost-effective efficiency measures identified by a third-party energy service company using the office of financial management's Washington state life-cycle cost tool were implemented.

(c) By January 1, 2030, the department of ecology must determine a best in class benchmark for all EITE facilities that paid taxes under this chapter during any year between 2022 and 2029.

(d) For new EITE facilities that begin activities after January 1, 2030, that require them to pay the tax imposed under this chapter, the department of ecology must determine a best in class benchmark for that facility by no later than two years after the beginning of the activity. Until a best in class benchmark is determined for an EITE facility under this subsection, the facility may take a credit equal to 70 percent of the EITE facility's presumptive greenhouse gas emissions, as determined by the department of ecology, or emissions for the most recent year for which actual greenhouse gas emissions are available.

(2) The department of commerce in consultation with the department of ecology shall by rule adopt objective numeric criteria for identifying EITE facilities and the greenhouse gas emissions emitted from such facilities. The rules must establish a greenhouse gas emissions baseline for each EITE facility that takes into consideration both production output and number of employees. The rules must include but are not limited to designating facilities in the cement, steel, aluminum, food processing, pulp and paper, and aircraft, missile, and space craft production industries. The rules must be adopted by June 30, 2022.

(3)(a) An EITE facility that takes a credit under this section may trade credits to another EITE facility that owes taxes under this chapter.

(b) An EITE facility that takes a credit under this section may bank tax credits for use to meet future tax obligations during any of the subsequent three tax years.

(4) The department of commerce must adopt rules to administer the EITE credit program. The rules must provide criteria for disallowing credits or recapture of the value of the credit when an EITE facility fails to meet the requirements of this section.

NEW SECTION. **Sec.**  The department of ecology, in establishing benchmarks and presumptive emissions applicable to an EITE facility for a compliance period, must consider or exclude any abnormal operating periods when an EITE facility's carbon intensity has been materially affected by circumstances that are unlikely to manifest during the applicable compliance period.

NEW SECTION. **Sec.**  (1) In addition to the credits that an EITE facility may claim under section 5 of this act, an EITE facility that achieves employment performance standards may claim credits equal to:

(a) An additional two percent of the applicable greenhouse gas emissions volume specified in section 5 of this act, for EITE facilities that exceed the minimum threshold of cumulative points established by the department of labor and industries under section 8 of this act;

(b) An additional 3.5 percent of the applicable greenhouse gas emissions volume specified in section 5 of this act, for EITE facilities that both:

(i) Exceed the minimum threshold of cumulative points established by the department of labor and industries under section 8 of this act; and

(ii) Did not experience a decrease in the number of full-time jobs associated with the facility over the most recent two years; or

(c) An additional amount between 3.5 percent and five percent of the applicable greenhouse gas emissions volume specified in section 5 of this act, for EITE facilities that both:

(i) Exceed the minimum threshold of cumulative points established by the department of labor and industries under section 8 of this act; and

(ii) Experienced an increase in the number of full-time jobs associated with the facility over the most recent two years.

(2) The amount of credits awarded to an EITE facility specified in subsection (1)(c) of this section is equal to 3.5 percent of the applicable greenhouse gas emissions volume specified in section 5 of this act plus the percentage rate in employment increase experienced by the EITE facility, as calculated by:

(a) Subtracting the number of full-time employees at the EITE facility during the year preceding the most recent year for which such data were reported from the number of full-time employees at the EITE facility during the most recent year for which such data were reported; and

(b) Dividing the result in (a) of this subsection by the number of full-time employees at the EITE facility during the year preceding the most recent year for which such data were reported.

NEW SECTION. **Sec.**  (1) The department of labor and industries must develop a point system corresponding to various business practices, employee benefits, or policies concerning treatment of workers, and will establish a minimum threshold of cumulative points that will constitute meeting the standards of section 7(1)(a) of this act.

(2) The department of labor and industries may consider a variety of such practices, benefits, or policies, with a special emphasis on:

(a) Having in effect a collective bargaining agreement, or establishing and having in effect a policy whereby the employer agrees to remain neutral or otherwise agrees to work with or provide information to a bona fide labor organization for the purposes of unionizing employees;

(b) Offering at least 85 percent of employees health care coverage under a health benefits plan that is equal to or better than a silver plan that can be acquired through the Washington health benefit exchange created under chapter 43.71 RCW, and that includes a coverage option for dependents of employees. To qualify for this provision, the majority of premium costs under such a plan must be funded by the employer;

(c) Providing at least 85 percent of employees a living wage. In determining the appropriate level for living wage, the department of labor and industries cannot set a level that is below the median hourly wage of the county in which a project is proposed to be sited;

(d) Offering at least 85 percent of employees retirement benefits;

(e) Establishing and having in effect a policy whereby the employer will prioritize hiring workers:

(i) Displaced from or having an elevated likelihood of being displaced from sectors vulnerable to a transition to a low-carbon economy; and

(ii) Who live close to the place of work and face barriers to employment; and

(f) Using state-registered apprenticeship programs.

(3) The department of labor and industries may establish different standards for different sectors if necessary and appropriate to reflect variations in workplace conditions among sectors and may incorporate other flexibility mechanisms to facilitate both protection of workers and to ensure that project sponsors have a high likelihood of being able to comply with the criteria established under this subsection.

NEW SECTION. **Sec.**  (1) The carbon pollution tax imposed on EITE facilities in section 4 of this act does not apply to:

(a) Biogenic fuels;

(b) Fossil fuels upon which the state is prohibited from imposing a tax under the state Constitution or the Constitution or laws of the United States;

(c)(i) Fossil fuels exported from this state. Export to Indian country located within the boundaries of this state is not considered export from this state. For purposes of this subsection, "Indian country" has the same meaning as provided in RCW 37.12.160.

(ii) An exporter of fossil fuels upon which another person previously paid the carbon pollution tax is entitled to a credit or refund of the tax paid, if the exporter can establish to the department's satisfaction that the tax under this chapter was previously paid on the exported fossil fuels. The person who paid the carbon pollution tax is not entitled to an exemption under this subsection (1)(c) when any other person is entitled to a refund or credit under this subsection (1)(c)(ii). For purposes of this subsection, "exporter" means a person who exports fossil fuels from this state;

(d) Biogas, which includes renewable liquid natural gas or liquid compressed natural gas made from biogas, landfill gas, biodiesel, renewable diesel, and cellulosic ethanol;

(e) Aircraft fuel as defined in RCW 82.42.010;

(f) Activities or property of Indian tribes and individual Indians that are exempt from state imposition of a tax as a matter of federal law or state law, whether by statute, rule, or compact.

(2)(a) For any fossil fuels subject to the carbon pollution tax imposed by section 4 of this act that are also subject to a comparable carbon pollution tax or charge on carbon content imposed by another jurisdiction, including the federal government, or allowances required to be purchased by another jurisdiction, the EITE facility may take a credit against the tax imposed under this chapter by the amount of the comparable pollution tax or charge paid to the other jurisdiction up to the amount of tax owed under this chapter, provided that the EITE facility claiming the credit provides evidence acceptable to the department that the equivalent tax has been paid.

(b) For the purposes of this section, a comparable carbon pollution tax or charge means a tax or charge that is not generally imposed on other activities or privileges that is:

(i) Imposed on the sale, use, possession, transfer, or consumption of fossil fuels; and

(ii) Measured in terms of greenhouse gas emissions by the greenhouse gas emissions resulting from the complete combustion or oxidation of such fossil fuels.

NEW SECTION. **Sec.**  The provisions of chapter 82.32 RCW apply to this chapter. If there is a conflict between a provision of this chapter and a provision of chapter 82.32 RCW, the provision of this chapter controls.

NEW SECTION. **Sec.**  (1) Persons using fossil fuels to refine fossil fuels and that are designed as EITE facilities by the department of commerce must file with the department:

(a) A fuel use report similar to the United States environmental protection agency facility level information on greenhouse gases tool report containing their fossil fuel greenhouse gas emissions; and

(b) Such other information as the department may require by rule.

(2)(a) The department may adopt by rule a day each month by which the information specified in subsection (1) of this section must be submitted to the department for the previous calendar month, together with the tax calculated thereon based on the tax tables adopted by the department and the department of ecology. The tax on the carbon content reported must be paid to the department within 15 days of the filing required by subsection (1) of this section.

(b) The rules adopted by the department under this section may allow a refinery to file an interim report based on estimates together with an estimated payment based thereon and then file a final report at a later date specified by the department. The department must impose interest and penalties on underpayments in accordance with the requirements of chapter 82.32 RCW.

NEW SECTION. **Sec.**  (1) The directors of the department, the department of commerce, and the department of ecology, must adopt rules necessary to implement and administer this chapter and may coordinate concerning the process, timelines, and documentation related to such rule making, as necessary.

(2) By April 1, 2022, the department of ecology, in consultation with the department, must adopt a rule providing for the measurement of the carbon content of fossil fuel for purposes of the tax imposed under this chapter. The department must rely on the rule adopted by the department of ecology for purposes of imposing and administering the tax.

NEW SECTION. **Sec.**  As of the effective date of this section, chapter 173-442 WAC may not be enforced by the department of ecology with respect to EITE facilities. If the tax imposed under this chapter is invalidated, the department of ecology is directed to use the full extent of its authority to regulate greenhouse gas emissions from EITE facilities under chapter 70A.15 RCW to help achieve the limits specified in RCW 70A.45.020.

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

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

NEW SECTION. **Sec.**  Sections 1 through 15 of this act constitute a new chapter in Title 82 RCW.

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