S-3677.4

SENATE BILL 5967

State of Washington 67th Legislature 2022 Regular Session

By Senators Carlyle, Rolfes, Lovelett, Nguyen, Robinson, and Saldaña

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AN ACT Relating to imposing a state climate resiliency and mitigation surcharge on large financial institutions financing the global fossil fuel industry while recognizing the financial institution industry's efforts to address climate change; amending RCW 82.04.29004; adding a new section to chapter 70A.05 RCW; adding a new section to chapter 82.04 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that:

(a) The Paris agreement is a binding international treaty on climate change, which was adopted by 196 parties, including the United States in Paris, in 2015;

(b) The Paris agreement is a landmark agreement that establishes a framework for bringing all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects;

(c) In recent years, the state of Washington has taken equally ambitious efforts to meet science-based net zero targets by 2050 under RCW 70A.45.020. In order to meet these obligations, the state has adopted a range of decarbonization bills including: Cap and invest, clean fuel standard, eliminating fossil fuels from electricity supply by 2045, building efficiency standards, hydrofluorocarbon elimination, electrification of transportation, and more;

(d) Implementation of these policies requires economic and social transformation;

(e) To achieve economic and social transformation, it is essential that every private and governmental institution, and the citizenry served by these institutions, contribute to this effort;

(f) Notwithstanding these global, national, and state-level efforts to address climate change, the world's largest commercial and investment banks have been largely omitted from these efforts and, to a certain extent, impeded these efforts in recent years through fossil fuel industry financing practices;

(g) In fact, banks play a disproportionate and comprehensive role in climate change by financing fossil fuel projects worldwide that are directly and scientifically shown to be the primary cause of climate change. Between 2016 and 2021, data shows that the 60 largest commercial and investment banks through their lending and underwriting practices invested a total of $3,800,000,000,000 into fossil fuels;

(h) Despite this track record by the financial industry of continuing to pour financing into companies that directly engage in oil and gas extraction, petroleum refining, coal mining, and other fossil fuel industries, a coalition of the world's biggest investors, banks and insurers at the 2021 climate change conference made a pledge, referred to as the Glasgow financial alliance for net zero, to align their lending and investment portfolios with net zero emissions by 2050. According to a press release by the Glasgow financial alliance for net zero, participating financial institutions "have committed to high ambition, science-based targets, including achieving net zero emissions by 2050 at the latest, delivering their fair share of 50 percent emission reductions this decade, and reviewing their targets towards this every five years"; and

(i) In 2020, the office of financial management prepared a report indicating that, in the 2019-2021 biennium, the state spent approximately $1,400,000,000 on programs, projects, and activities that contribute to climate resiliency.

(2) Therefore it is the legislature's intent to:

(a) Require financial institutions to directly, demonstrably, and transparently contribute at the state level to Washington's climate resiliency and mitigation commitment efforts;

(b) Provide additional funding for climate resiliency efforts;

(c) Encourage financial institutions to expeditiously cease financial practices that create a negative externality and impede efforts to address climate change; and

(d) Achieve these objectives by establishing a surcharge on financial institutions that continue to significantly finance the fossil fuel industry.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.05 RCW to read as follows:

(1)(a) From January 1, 2023, through December 31, 2049, a climate resiliency and mitigation surcharge is imposed on specified financial institutions that are bankers of fossil fuels. The surcharge is equal to the gross income of the business taxable under RCW 82.04.290(2) multiplied by the rate specified under (b) of this subsection (1). The surcharge is in addition to any other fees or taxes imposed on specified financial institutions.

(b) Except as provided in subsection (3) of this section, the rate for the climate resiliency and mitigation surcharge is determined by the total amount of adjusted fossil fuel financing provided by a specified financial institution's consolidated financial institution group, as a percentage of total financing for all industries provided by the institution's consolidated financial institution group, for the prior calendar year, based on the following schedule:

Adjusted Fossil Fuel Financing as Percent of Total Financing	Climate Resiliency and Mitigation Surcharge Rate
4.0 percent or more	0.50 percent
2.5 percent or more to 4.0 percent	0.375 percent
Less than 2.5 percent	0.25 percent

(c) The rate under (b) of this subsection for a specified financial institution must be adjusted July 1, 2024, and each July 1st thereafter, if: (i) The specified financial institution's consolidated financial institution group's adjusted fossil fuel financing percentage, as determined by the most recent Washington fossil fuel financing report, requires a different rate under (b) of this subsection; or (ii) the specified financial institution is no longer a banker of fossil fuels.

(2) The department of revenue shall administer the climate resiliency and mitigation surcharge imposed under this section in a manner consistent with the financial institution surtax under RCW 82.04.29004. The conditions and requirements in RCW 82.04.29004 (3) and (4) apply to this section.

(3)(a) By October 1, 2022, the department of commerce must publish a report assessing the adjusted fossil fuel financing, as a percentage of total financing for all industries, for each specified financial institution's consolidated financial institution group in calendar year 2021. To make this determination, the department of commerce shall use league tables published by a well-established financial data analytics and services firm that provides financial, economic, and government information covering industry sectors. The report published under this subsection (3)(a) must be used to set the rate under subsection (1)(b) of this section for calendar year 2023.

(b) By April 1, 2024, and by each April 1st thereafter, the department of commerce must publish a similar report for use in the climate resiliency and mitigation surcharge rate determination under subsection (1)(b) of this section by assessing the adjusted fossil fuel financing, as a percentage of total financing for all industries, for each specified financial institution's consolidated financial institution group, for the prior calendar year. The report published under this subsection (3)(b) must be used to set the rate under subsection (1)(b) of this section, as adjusted under subsection (1)(c) of this section, for fiscal year 2025 and thereafter.

(4) The surcharge collected under this section must be deposited into the climate resiliency account in RCW 43.79.545.

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

(a) "Adjusted fossil fuel financing" means league table credit for financing fossil fuel companies less league table credit for financing renewable energy companies.

(b) "Banker of fossil fuels" means a specified financial institution that is part of a consolidated financial institution group listed in the Washington fossil fuel financing report as receiving league table credit financing one or more fossil fuel companies in excess of $1,000,000,000, in the aggregate, in the prior calendar year.

(c) "Financing" means lending or underwriting of corporate bonds, government bonds, or equity issuances.

(d) "Fossil fuel company" means a business listed in one of the following industry classifications as provided in a league table:

(i) Coal operation;

(ii) Oil and gas exploration and production;

(iii) Integrated oils;

(iv) Oil and gas services and equipment;

(v) Oil and gas pipelines; and

(vi) Oil and gas refining and marketing.

(e) "League table" means a table aggregating the lead financing provided by financial institutions to various industry sectors.

(f) "Renewable energy company" means a business listed in the renewable energy classification, which includes biofuels, renewable energy equipment, and renewable energy project development.

(g) "Specified financial institution" has the same meaning as provided in RCW 82.04.29004.

(h) "Washington fossil fuel financing report" means the report developed under subsection (3) of this section.

Sec. 3. RCW 82.04.29004 and 2019 c 420 s 2 are each amended to read as follows:

(1)(a) Beginning January 1, 2020, in addition to any other taxes imposed under this chapter, an additional tax is imposed on specified financial institutions. The additional tax is equal to the gross income of the business taxable under RCW 82.04.290(2) multiplied by the rate of 1.2 percent, subject to modification under (b) of this subsection.

(b) Beginning July 1, 2024, and every July 1st thereafter, a specified financial institution, if notified by the department, may adjust its rate for the current fiscal year under this section as follows:

(i) The specified financial institution is subject to a rate of 1.075 percent if the institution is subject to a rate of 0.375 percent under section 2 of this act for the fiscal year; and

(ii) The specified financial institution is subject to a rate of 0.95 percent if the institution is subject to a rate of 0.25 percent under section 2 of this act for the fiscal year.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliated" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection (2)(a), "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Consolidated financial institution group" means all financial institutions that are affiliated with each other.

(c) "Consolidated financial statement" means a consolidated financial institution group's consolidated reports of condition and income filed with the federal financial institutions examination council, or successor agency.

(d) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30A, 30B, 31, 32, and 33 RCW, or registered under the federal bank holding company act of 1956, as amended, or registered as a savings and loan holding company under the federal national housing act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the national bank act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the federal deposit insurance act, 12 U.S.C. Sec. 1813(b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Sec. 611 through 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) A production credit association organized under the federal farm credit act of 1933, all of whose stock held by the federal production credit corporation has been retired;

(viii) Any corporation or other business entity who receives gross income taxable under RCW 82.04.290, and whose voting interests are more than fifty percent owned, directly or indirectly, by any person or business entity described in (d)(i) through (vii) of this subsection other than an insurance company liable for the insurance premiums tax under RCW 48.14.020 or any other company taxable under chapter 48.14 RCW;

(ix)(A) A corporation or other business entity that receives more than fifty percent of its total gross income for federal income tax purposes from finance leases. For purposes of this subsection, a "finance lease" means a lease that meets two requirements:

(I) It is the type of lease permitted to be made by national banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the currency regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June 20, 1991, effective July 22, 1991), and regulation Y of the federal reserve system 12 C.F.R. Part 225.25, as amended); and

(II) It is the economic equivalent of an extension of credit, i.e., the lease is treated by the lessor as a loan for federal income tax purposes. In no event does a lease qualify as an extension of credit where the lessor takes depreciation on such property for federal income tax purposes.

(B) For this classification to apply, the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement;

(x) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(1)(e), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290(2), that receives more than fifty percent of its gross receipts from activities that a person described in (d)(ii) through (vii) and (ix) of this subsection is authorized to transact.

(e)(i) "Specified financial institution" means a financial institution that is a member of a consolidated financial institution group that reported on its consolidated financial statement for the previous calendar year annual net income of at least one billion dollars, not including net income attributable to noncontrolling interests, as the terms "net income" and "noncontrolling interest" are used in the consolidated financial statement.

(ii) If financial institutions are no longer required to file consolidated financial statements, "specified financial institution" means any person that was subject to the additional tax in this section in at least two of the previous four calendar years.

(3) The department must notify the fiscal committees of the legislature if financial institutions are no longer required to file consolidated financial statements.

(4) To aid in the effective administration of the additional tax imposed in this section, the department may require a person believed to be a specified financial institution to disclose whether it is a member of a consolidated financial institution group and, if so, to identify all other members of its consolidated financial institution group. A person failing to comply with this subsection is deemed to have intended to evade tax payable under this section and is subject to the penalty in RCW 82.32.090(7) on any tax due under this section by the person and any financial institution affiliated with the person.

(5) Taxes collected under this section must be deposited into the general fund.

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

See climate resiliency and mitigation surcharge in chapter 70A.05 RCW.

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