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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5091**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators King, Conway, Gildon, Mullet, Short, and Van De Wege)

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

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

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

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

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

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

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

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

(c) Business and employment changes in green electrolytic hydrogen fuel product research, development, and manufacture in Washington compared with national changes in the industry.

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

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

PREFERENTIAL BUSINESS AND OCCUPATION TAX RATE.

(1)(a) Beginning January 1, 2024, upon every person engaging within this state in the business of manufacturing hydrogen fuel products, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

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

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

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

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

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

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

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

(4) This section expires January 1, 2035.

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

BUSINESS AND OCCUPATION TAX CREDIT FOR HYDROGEN FUEL PRODUCT RESEARCH AND DEVELOPMENT.

(1) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified hydrogen fuel product development. For a person who is a manufacturer or processor for hire of hydrogen fuel products, credit may be earned for expenditures occurring after January 1, 2024.

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

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

(4) Any person claiming the credit must file an electronic form prescribed by the department that includes the amount of the credit claimed, an estimate of the anticipated hydrogen fuel product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe. A person whose reporting period is less than annual must make an adjustment to the total credit claimed for the calendar year using the person's actual hydrogen fuel product development expenditures for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

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

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

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

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

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

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

(B) The discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products into new products; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) This section expires January 1, 2035.

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

BUSINESS AND OCCUPATION TAX CREDIT FOR PROPERTY TAXES.

(1) In computing the tax imposed under this chapter, a credit is allowed for state and local property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

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

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

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

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

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

(A) The numerator of the fraction is the total taxable amount subject to the tax imposed under section 2 of this act on the applicable business activities of manufacturing hydrogen fuel products.

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

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

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

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

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

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

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

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

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

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

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

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

(10) This section expires January 1, 2035.

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