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**SENATE BILL 5091**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators King, Conway, Gildon, Mullet, Short, and Van De Wege

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1 AN ACT Relating to creating and expanding tax incentives for the  
2 research, development, production, and sale of hydrogen fuel cells in  
3 Washington state; adding new sections to chapter 82.04 RCW; creating  
4 a new section; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** . (1) This section is the tax preference  
7 performance statement for the tax preferences contained in sections  
8 2, 3, and 4, chapter . . ., Laws of 2023 (sections 2, 3, and 4 of  
9 this act). This performance statement is only intended to be used for  
10 subsequent evaluation of the tax preference. It is not intended to  
11 create a private right of action by any party or be used to determine  
12 eligibility for preferential tax treatment.

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

17 (3) It is the legislature's specific public policy objective to  
18 encourage hydrogen fuel cell research, development, manufacture, and  
19 sale in Washington to advance hydrogen fuel cell technology,  
20 production, and adoption in the state.

1 (4) If a review finds that the number of businesses in this state  
2 focused on hydrogen fuel cell research, development, manufacture, or  
3 sale has increased as measured by the number of businesses claiming  
4 the tax preferences in this act, or that Washington businesses  
5 focused on hydrogen fuel cell research, development, and  
6 manufacturing in the state have made advancements in hydrogen fuel  
7 cell technology, then the legislature intends to extend the  
8 expiration date of these tax preferences.

9 (5) In order to obtain the data necessary to perform the review  
10 in subsection (4) of this section, the joint legislative audit and  
11 review committee may access and use any relevant data collected by  
12 the state.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04  
14 RCW to read as follows:

15 PREFERENTIAL BUSINESS AND OCCUPATION TAX RATE. (1) Beginning  
16 October 1, 2023, upon every person engaging within this state in the  
17 business of manufacturing hydrogen fuel cells, or making sales, at  
18 retail or wholesale, of hydrogen fuel cells, as to such persons the  
19 amount of tax with respect to such business is, in the case of  
20 manufacturers, equal to the value of the product manufactured and the  
21 gross proceeds of sales of the product manufactured, or in the case  
22 of processors for hire, equal to the gross income of the business,  
23 multiplied by the rate of 0.2904 percent.

24 (2) For purposes of this section, "hydrogen fuel cell" means a  
25 technology that uses an electrochemical reaction to generate electric  
26 energy by combining atoms of hydrogen and oxygen in the presence of a  
27 catalyst.

28 (3) This section expires January 1, 2034.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04  
30 RCW to read as follows:

31 BUSINESS AND OCCUPATION TAX CREDIT FOR HYDROGEN FUEL CELL  
32 RESEARCH AND DEVELOPMENT. (1)(a) In computing the tax imposed under  
33 this chapter, a credit is allowed for each person for qualified  
34 hydrogen fuel cell development. For a person who is a manufacturer or  
35 processor for hire of hydrogen fuel cells, credit may be earned for  
36 expenditures occurring after July 1, 2023.

37 (b) Any unused credits earned under this section may be accrued  
38 and carried forward.

1 (2) The credit is equal to the amount of qualified hydrogen fuel  
2 cell development expenditures of a person, multiplied by the rate of  
3 1.75 percent.

4 (3) Except as provided in subsection (1)(b) of this section, the  
5 credit under this section must be claimed against taxes due for the  
6 same calendar year in which the qualified hydrogen fuel cell  
7 development expenditures are incurred. The credit for each calendar  
8 year may not exceed the amount of tax otherwise due under this  
9 chapter for the calendar year. Refunds may not be granted in the  
10 place of a credit.

11 (4) Any person claiming the credit must file an electronic form  
12 prescribed by the department that includes the amount of the credit  
13 claimed, an estimate of the anticipated hydrogen fuel cell  
14 development expenditures during the calendar year for which the  
15 credit is claimed, an estimate of the taxable amount during the  
16 calendar year for which the credit is claimed, and such additional  
17 information as the department may prescribe.

18 (5) The definitions in this subsection apply throughout this  
19 section.

20 (a) "Hydrogen fuel cell" has the same meaning as provided in  
21 section 2 of this act.

22 (b) (i) "Hydrogen fuel cell development" means:

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

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

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

33 (ii) "Hydrogen fuel cell development" does not include:

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

38 (B) Manufacturing activities or other production-oriented  
39 activities.

1 (c) "Qualified hydrogen fuel cell development" means hydrogen  
2 fuel cell development performed within this state.

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

9 (ii) "Qualified hydrogen fuel cell development expenditures" does  
10 not include amounts paid to a person or to the state and any of its  
11 departments and institutions, other than a public educational or  
12 research institution to conduct qualified hydrogen fuel cell  
13 development; or capital costs and overhead, such as expenses for  
14 land, structures, or depreciable property.

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

19 (6) In addition to all other requirements under this title, a  
20 person claiming the credit under this section must file a complete  
21 annual tax performance report with the department under RCW  
22 82.32.534.

23 (7) Credit may not be claimed for expenditures for which a  
24 similar credit is claimed under any other section of this chapter.

25 (8) This section expires January 1, 2034.

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

28 BUSINESS AND OCCUPATION TAX CREDIT FOR PROPERTY TAXES. (1) In  
29 computing the tax imposed under this chapter, a credit is allowed for  
30 property taxes and leasehold excise taxes paid during the calendar  
31 year.

32 (2) The credit is equal to:

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

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

1 (ii) Property taxes attributable to an increase in assessed value  
2 due to the renovation or expansion of a building used exclusively in  
3 manufacturing hydrogen fuel cells; and

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

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

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

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

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

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

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

31 (a) "Hydrogen fuel cell" has the same meaning as provided in  
32 section 2 of this act.

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

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

38 (5) In addition to all other requirements under this title, a  
39 person claiming the credit under this section must file a complete

1 annual tax performance report with the department under RCW  
2 82.32.534.

3 (6) This section expires January 1, 2034.

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