SENATE BILL REPORT
SB 5091

As of January 17, 2023

Title: An act relating to creating and expanding tax incentives for the research, development, production, and sale of hydrogen fuel cells in Washington state.

Brief Description: Creating and expanding tax incentives for the research, development, production, and sale of hydrogen fuel cells in Washington state.

Sponsors: Senators King, Conway, Gildon, Mullet, Short and Van De Wege.

Brief History:
Committee Activity: Business, Financial Services, Gaming & Trade: 1/19/23.

Brief Summary of Bill

- Authorizes state business and occupation tax incentives for hydrogen fuel cell research, development, production, and sale.
- Requires the Joint Legislative Audit and Review Committee to evaluate the effectiveness of the tax incentives in achieving their stated public policy objectives prior to the expiration of the tax incentives in 2034.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Jeffrey Mitchell (786-7438)

Background: Tax Preference Review Requirements. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use to review the effectiveness of the preference in achieving its stated public

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

policy objectives. Tax preferences must be reviewed by JLARC at least once every ten years, unless state statute requires otherwise. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

State Business and Occupation Tax. The state business and occupation (B&O) tax is Washington's primary business tax. It is a gross receipts tax measured on the value of products, gross proceeds of sale, or gross income of the business. There are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by classification (activity). The major rates are: 0.471 percent retailing activities, 0.484 percent manufacturing and wholesaling activities, and for service and other activities, either 1.5 percent or 1.75 percent, depending upon the amount of annual gross income of the business. The state B&O tax includes a number of preferential tax rates, credits, exemptions, and deductions.

Clean Alternative Fuel Tax Preferences. A clean alternative fuel generally means natural gas, propane, hydrogen, or electricity. State law provides a number of tax preferences related to vehicles that use a clean alternative fuel, which includes:

- sales and use tax exemptions for the purchase of clean alternative fuel vehicles;
- public utility tax and B&O tax credits for commercial vehicles using clean alternative fuels;
- sales and use tax exemptions on electric vehicle infrastructure, electric vehicle batteries and fuel cells, and zero emissions buses; and
- a sales and use tax deferral program on the construction of facilities used for clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

Summary of Bill: Several new B&O tax preferences are created for activities related to hydrogen fuel cell research, development, production, and sale. 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.

Beginning October 1, 2023, a preferential B&O tax rate of 0.2904 percent applies to businesses engaged in the manufacturing of hydrogen fuel cells, or making sales at wholesale or retail, of hydrogen fuel cells.

For expenditures occurring after July 1, 2023, a B&O tax credit is allowed for qualified hydrogen fuel cell development. The credit is equal to the amount of qualified hydrogen fuel cell development expenditures of a business, multiplied by the rate of 1.75 percent. Qualified hydrogen fuel cell development expenditures would be comprised primarily of wages and compensation paid for the research, design, and engineering activities performed in the state in relation to the development of hydrogen fuel cells, hydrogen fuel cell technology, or a product line of a hydrogen fuel cell, including prototype development, testing, and certification. It would also include expenditures for 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 tool design and engineering design for the manufacturing process. Qualified hydrogen fuel cell development expenditures does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software development for internal use, and research in peripheral areas. A business claiming the credit must file with the Department of Revenue a form that specifies the amount of the credit claimed, an estimate of the anticipated hydrogen fuel cell 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 any additional information the Department of Revenue requires.

A B&O credit is allowed for state and local property taxes and leasehold excise taxes paid on land and buildings constructed after July 1, 2023. The buildings must be used exclusively for manufacturing hydrogen fuel cells. Personal property taxes paid on machinery and equipment (M&E) used at the facility would also qualify for the B&O tax credit if the M&E was exempt under statute from sales and use taxes.

The B&O tax preferences expire January 1, 2034.

The legislation includes a TPPS. The stated public policy objective is to encourage hydrogen fuel cell research, development, manufacture, and sale in Washington to advance hydrogen fuel cell technology, production, and adoption in the state. If the JLARC review finds the number of businesses in this state focused on hydrogen fuel cell research, development, manufacture, or sale has increased as measured by the number of businesses claiming the new tax preferences, or that Washington businesses focused on hydrogen fuel cell research, development, and manufacturing in the state have made advancements in hydrogen fuel cell technology, then the Legislature intends to extend the expiration date of the tax preferences.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.