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**SUBSTITUTE SENATE BILL 5573**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Hatfield, Schoesler, Zarelli and Kastama; by request of Department of Revenue)

READ FIRST TIME 02/14/07.

1 AN ACT Relating to modifying the rural county tax credit provided  
2 in chapter 82.62 RCW; amending RCW 82.62.010, 82.62.020, 82.62.030,  
3 82.62.045, and 82.62.050; creating new sections; and providing an  
4 effective date.

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

6 **Sec. 1.** RCW 82.62.010 and 2001 c 320 s 12 are each amended to read  
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Applicant" means a person applying for a tax credit under this  
11 chapter.

12 (2) "Department" means the department of revenue.

13 (3) "Eligible area" means an area as defined in RCW 82.60.020.

14 (4)(a) "Eligible business project" means manufacturing or research  
15 and development activities which are conducted by an applicant in an  
16 eligible area at a specific facility, provided the applicant's average  
17 (~~full-time~~) qualified employment positions at the specific facility  
18 will be at least fifteen percent greater in the (~~year for which the~~  
19 ~~credit is being sought~~) four consecutive full calendar quarters after

1 the calendar quarter during which the first qualified employment  
2 position is filled than the applicant's average (~~(full-time)~~) qualified  
3 employment positions at the same facility in the four consecutive full  
4 calendar quarters immediately preceding (~~(year)~~) the calendar quarter  
5 during which the first qualified employment position is filled.

6 (b) "Eligible business project" does not include any portion of a  
7 business project undertaken by a light and power business as defined in  
8 RCW 82.16.010(5) or that portion of a business project creating  
9 qualified full-time employment positions outside an eligible area.

10 (5) "First qualified employment position" means the first qualified  
11 employment position filled for which a credit under this chapter is  
12 sought.

13 (6) "Manufacturing" means the same as defined in RCW 82.04.120.  
14 "Manufacturing" also includes computer programming, the production of  
15 computer software, and other computer-related services, and the  
16 activities performed by research and development laboratories and  
17 commercial testing laboratories.

18 (~~(+6)~~) (7) "Person" has the meaning given in RCW 82.04.030.

19 (~~(+7)~~) (8)(a)(i) "Qualified employment position" means a permanent  
20 full-time employee employed in the eligible business project during  
21 (~~(the entire tax year)~~) four consecutive full calendar quarters.

22 (~~(+8) "Tax year" means the calendar year in which taxes are due.~~)

23 (ii) For seasonal employers, "qualified employment position" also  
24 includes the equivalent of a full-time employee in work hours for four  
25 consecutive full calendar quarters.

26 (b) For purposes of this subsection, "full time" means a normal  
27 work week of at least thirty-five hours.

28 (c) Once a permanent, full-time employee has been employed, a  
29 position does not cease to be a qualified employment position solely  
30 due to periods in which the position goes vacant, as long as:

31 (i) The cumulative period of any vacancies in that position is not  
32 more than one hundred twenty days in the four-quarter period; and

33 (ii) During a vacancy, the employer is training or actively  
34 recruiting a replacement permanent, full-time employee for the  
35 position.

36 (9) "Recipient" means a person receiving tax credits under this  
37 chapter.

1 (10) "Research and development" means the development, refinement,  
2 testing, marketing, and commercialization of a product, service, or  
3 process before commercial sales have begun. As used in this  
4 subsection, "commercial sales" excludes sales of prototypes or sales  
5 for market testing if the total gross receipts from such sales of the  
6 product, service, or process do not exceed one million dollars.

7 (11) "Seasonal employee" means an employee of a seasonal employer  
8 who works on a seasonal basis. For the purposes of this subsection and  
9 subsection (12) of this section, "seasonal basis" means a continuous  
10 employment period of less than twelve consecutive months.

11 (12) "Seasonal employer" means a person who regularly hires more  
12 than fifty percent of its employees to work on a seasonal basis.

13 **Sec. 2.** RCW 82.62.020 and 1986 c 116 s 16 are each amended to read  
14 as follows:

15 Application for tax credits under this chapter must be made  
16 ~~((before))~~ within ninety consecutive days after the ~~((actual hiring~~  
17 ~~of))~~ first qualified employment position~~((s))~~ is filled. The  
18 application shall be made to the department in a form and manner  
19 prescribed by the department. The application shall contain  
20 information regarding the location of the business project, the  
21 applicant's average employment, if any, at the facility for the prior  
22 ~~((year))~~ four consecutive full calendar quarters immediately preceding  
23 the earlier of the calendar quarter during which the application  
24 required by this section is submitted to the department or the first  
25 qualified employment position is filled, estimated or actual new  
26 employment related to the project, estimated or actual wages of  
27 employees related to the project, estimated or actual costs, time  
28 schedules for completion and operation, and other information required  
29 by the department. The department shall prescribe a method for  
30 calculating a seasonal employer's average employment levels. The  
31 department shall rule on the application within sixty days.

32 **Sec. 3.** RCW 82.62.030 and 2001 c 320 s 13 are each amended to read  
33 as follows:

34 (1)(a) A person shall be allowed a credit against the tax due under  
35 chapter 82.04 RCW as provided in this section. The credit shall equal:  
36 ~~((a))~~ (i) Four thousand dollars for each qualified employment

1 position with wages and benefits greater than forty thousand dollars  
2 annually that is directly created in an eligible business project and  
3 ~~((b))~~ (ii) two thousand dollars for each qualified employment  
4 position with wages and benefits less than or equal to forty thousand  
5 dollars annually that is directly created in an eligible business  
6 project.

7 (b) For purposes of calculating the amount of credit under (a) of  
8 this subsection with respect to qualified employment positions as  
9 defined in RCW 82.62.010(8)(a)(ii):

10 (i) In determining the number of qualified employment positions, a  
11 fractional amount is rounded down to the nearest whole number; and

12 (ii) Wages and benefits for each qualified employment position  
13 shall be equal to the quotient derived by dividing: (A) The sum of the  
14 wages and benefits earned for the four consecutive full calendar  
15 quarter period for which a credit under this chapter is earned by all  
16 of the person's new seasonal employees hired during that period; by (B)  
17 the number of qualified employment positions plus any fractional amount  
18 subject to rounding as provided under (b)(i) of this subsection. For  
19 purposes of this chapter, a credit is earned for the four consecutive  
20 full calendar quarters after the calendar quarter during which the  
21 first qualified employment position is filled.

22 (2) The department shall keep a running total of all credits  
23 allowed under this chapter during each fiscal year. The department  
24 shall not allow any credits which would cause the total to exceed seven  
25 million five hundred thousand dollars in any fiscal year. If all or  
26 part of an application for credit is disallowed under this subsection,  
27 the disallowed portion shall be carried over to the next fiscal year.  
28 However, the carryover into the next fiscal year is only permitted to  
29 the extent that the cap for the next fiscal year is not exceeded.

30 (3) No recipient may use the tax credits to decertify a union or to  
31 displace existing jobs in any community in the state.

32 (4) The credit may be used against any tax due under chapter 82.04  
33 RCW, and may be carried over until used. No refunds may be granted for  
34 credits under this section.

35 **Sec. 4.** RCW 82.62.045 and 1999 c 164 s 307 are each amended to  
36 read as follows:

1 (1) For the purposes of this section "eligible area" also means a  
2 designated community empowerment zone approved under RCW ((43.63A.700))  
3 43.31C.020.

4 (2) An eligible business project located within an eligible area as  
5 defined in this section qualifies for a credit under this chapter for  
6 those employees who at the time of hire are residents of the community  
7 empowerment zone in which the project is located, if the fifteen  
8 percent threshold is met. As used in this subsection, "resident" means  
9 the person makes his or her home in the community empowerment zone. A  
10 mailing address alone is insufficient to establish that a person is a  
11 resident for the purposes of this section.

12 (3) All other provisions and eligibility requirements of this  
13 chapter apply to applicants eligible under this section.

14 **Sec. 5.** RCW 82.62.050 and 2001 c 320 s 14 are each amended to read  
15 as follows:

16 (1) Each recipient shall submit a report to the department ((~~on~~  
17 ~~January 31st following the year the application for credit was~~  
18 ~~allowed~~)) by the last day of the month immediately following the end of  
19 the four consecutive full calendar quarter period for which a credit  
20 under this chapter is earned. The report shall contain information, as  
21 required by the department, from which the department may determine  
22 whether the recipient is meeting the requirements of this chapter. If  
23 the recipient fails to submit a report or submits an inadequate report,  
24 the department may declare the amount of taxes for which a credit has  
25 been used to be immediately assessed and payable. The recipient must  
26 keep records, such as payroll records showing the date of hire and  
27 employment security reports, to verify eligibility under this section.

28 (2) If, on the basis of a report under this section or other  
29 information, the department finds that a business project is not  
30 eligible for tax credit under this chapter for reasons other than  
31 failure to create the required number of qualified employment  
32 positions, the amount of taxes for which a credit has been used for the  
33 project shall be immediately due.

34 (3) If, on the basis of a report under this section or other  
35 information, the department finds that a business project has failed to  
36 create the specified number of qualified employment positions, the  
37 department shall assess interest, but not penalties, on the credited

1 taxes for which a credit has been used for the project. The interest  
2 shall be assessed at the rate provided for delinquent excise taxes,  
3 shall be assessed retroactively to the date of the tax credit, and  
4 shall accrue until the taxes for which a credit has been used are  
5 repaid.

6 NEW SECTION. **Sec. 6.** This act applies prospectively only, except  
7 that section 4 of this act applies both prospectively and  
8 retroactively.

9 NEW SECTION. **Sec. 7.** Sections 1 through 3 and 5 of this act apply  
10 with respect to applications for credit under chapter 82.62 RCW  
11 received by the department of revenue on or after January 1, 2008.

12 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2008.

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