

SHB 3014 - H AMD 1686

By Representative Hunter

ADOPTED AS AMENDED 03/17/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.60.010 and 1985 c 232 s 1 are each amended to read
4 as follows:

5 The legislature finds that there are several areas in the state
6 that are characterized by very high levels of unemployment and poverty.
7 The (~~legislative~~[legislature]) legislature further finds that
8 economic stagnation is the primary cause of this high unemployment rate
9 and poverty; that new state policies are necessary in order to promote
10 economic stimulation and new employment opportunities in these
11 distressed areas; and that policies providing incentives for economic
12 growth in these distressed areas are essential. For these reasons, the
13 legislature (~~hereby~~) reestablishes a tax deferral program to be
14 effective solely in distressed (~~areas and under circumstances where~~
15 ~~the deferred tax payments are for investments or costs that result in~~
16 ~~the creation of a specified number of jobs~~) counties. The legislature
17 declares that this limited program serves the vital public purpose of
18 creating employment opportunities and reducing poverty in the
19 distressed (~~areas~~) counties of the state.

20 **Sec. 2.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to read
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1) "Applicant" means a person applying for a tax deferral under
25 this chapter.

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

27 (3) "Distressed county" means a county that has an unemployment
28 rate, as determined by the employment security department, which is at
29 least twenty percent above the state average for the three calendar

1 years immediately preceding the year in which the list of distressed
2 counties is established or updated, as the case may be, as provided in
3 section 3 of this act.

4 (4) "Eligible area" means:

5 (a) Through June 30, 2010, a rural county as defined in RCW
6 82.14.370; and

7 (b) Beginning July 1, 2010, a distressed county.

8 ~~((4))~~ (5)(a) "Eligible investment project" means an investment
9 project that is located, as of the date the application required by RCW
10 82.60.030 is received by the department, in an eligible area as defined
11 in subsection ((3)) (4) of this section.

12 ~~(b) ((The lessor or owner of a qualified building is not eligible~~
13 ~~for a deferral unless:~~

14 ~~(i) The underlying ownership of the buildings, machinery, and~~
15 ~~equipment vests exclusively in the same person; or~~

16 ~~(ii)(A) The lessor by written contract agrees to pass the economic~~
17 ~~benefit of the deferral to the lessee;~~

18 ~~(B) The lessee that receives the economic benefit of the deferral~~
19 ~~agrees in writing with the department to complete the annual survey~~
20 ~~required under RCW 82.60.070; and~~

21 ~~(C) The economic benefit of the deferral passed to the lessee is no~~
22 ~~less than the amount of tax deferred by the lessor and is evidenced by~~
23 ~~written documentation of any type of payment, credit, or other~~
24 ~~financial arrangement between the lessor or owner of the qualified~~
25 ~~building and the lessee.~~

26 ~~(e))~~ "Eligible investment project" does not include any portion of
27 an investment project undertaken by a light and power business as
28 defined in RCW 82.16.010((5)) (4), other than that portion of a
29 cogeneration project that is used to generate power for consumption
30 within the manufacturing site of which the cogeneration project is an
31 integral part, or investment projects ((which)) that have already
32 received deferrals under this chapter.

33 ~~((5))~~ (6) "Initiation of construction" has the same meaning as in
34 RCW 82.63.010.

35 (7) "Investment project" means an investment in qualified buildings
36 or qualified machinery and equipment, including labor and services
37 rendered in the planning, installation, and construction of the
38 project.

1 (~~(6)~~) (8) "Manufacturing" means the same as defined in RCW
2 82.04.120. "Manufacturing" also includes:

3 (a) Before July 1, 2010: (i) Computer programming, the production
4 of computer software, and other computer-related services, but only
5 when the computer programming, production of computer software, or
6 other computer-related services are performed by a manufacturer as
7 defined in RCW 82.04.110 and contribute to the production of a new,
8 different, or useful substance or article of tangible personal property
9 for sale; (ii) the activities performed by research and development
10 laboratories and commercial testing laboratories(~~(7)~~); and (iii) the
11 conditioning of vegetable seeds; and

12 (b) Beginning July 1, 2010: (i) The activities performed by
13 research and development laboratories and commercial testing
14 laboratories; and (ii) the conditioning of vegetable seeds.

15 (~~(7)~~) (9) "Person" has the meaning given in RCW 82.04.030.

16 (~~(8)~~) (10) "Qualified buildings" means construction of new
17 structures, and expansion or renovation of existing structures for the
18 purpose of increasing floor space or production capacity used for
19 manufacturing (~~and~~) or research and development activities, including
20 plant offices and warehouses or other facilities for the storage of raw
21 material or finished goods if such facilities are an essential or an
22 integral part of a factory, mill, plant, or laboratory used for
23 manufacturing or research and development. If a building is used
24 partly for manufacturing or research and development and partly for
25 other purposes, the applicable tax deferral (~~shall~~) must be
26 determined by apportionment of the costs of construction under rules
27 adopted by the department.

28 (~~(9)~~) (11) "Qualified employment position" means a permanent
29 full-time employee employed in the eligible investment project during
30 the entire tax year. The term "entire tax year" means a full-time
31 position that is filled for a period of twelve consecutive months. The
32 term "full-time" means at least thirty-five hours a week, four hundred
33 fifty-five hours a quarter, or one thousand eight hundred twenty hours
34 a year.

35 (~~(10)~~) (12) "Qualified machinery and equipment" means all new
36 industrial and research fixtures, equipment, and support facilities
37 that are an integral and necessary part of a manufacturing or research
38 and development operation. "Qualified machinery and equipment"

1 includes: Computers; software; data processing equipment; laboratory
2 equipment; manufacturing components such as belts, pulleys, shafts, and
3 moving parts; molds, tools, and dies; operating structures; and all
4 equipment used to control or operate the machinery.

5 ~~((+11))~~ (13) "Recipient" means a person receiving a tax deferral
6 under this chapter.

7 ~~((+12))~~ (14) "Research and development" means the development,
8 refinement, testing, marketing, and commercialization of a product,
9 service, or process before commercial sales have begun, but only when
10 such activities are intended to ultimately result in the production of
11 a new, different, or useful substance or article of tangible personal
12 property for sale. As used in this subsection, "commercial sales"
13 excludes sales of prototypes or sales for market testing if the total
14 gross receipts from such sales of the product, service, or process do
15 not exceed one million dollars.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.60 RCW
17 to read as follows:

18 The department, with the assistance of the employment security
19 department, must establish a list of distressed counties effective July
20 1, 2010. The list of distressed counties is effective for a twenty-
21 four month period and must be updated by July 1st of the year that is
22 two calendar years after the list was established or last updated, as
23 the case may be.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.60 RCW
25 to read as follows:

26 The lessor or owner of a qualified building is not eligible for a
27 deferral unless:

28 (1) The underlying ownership of the buildings, machinery, and
29 equipment vests exclusively in the same person; or

30 (2)(a) The lessor by written contract agrees to pass the economic
31 benefit of the deferral to the lessee;

32 (b) The lessee that receives the economic benefit of the deferral
33 agrees in writing with the department to complete the annual survey
34 required under RCW 82.60.070; and

35 (c) The economic benefit of the deferral passed to the lessee is no
36 less than the amount of tax deferred by the lessor and is evidenced by

1 written documentation of any type of payment, credit, or other
2 financial arrangement between the lessor or owner of the qualified
3 building and the lessee.

4 **Sec. 5.** RCW 82.60.030 and 1994 sp.s. c 1 s 2 are each amended to
5 read as follows:

6 (1) Application for deferral of taxes under this chapter must be
7 made before initiation of the construction of the investment project or
8 acquisition of equipment or machinery. The application (~~shall~~) must
9 be made to the department in a form and manner prescribed by the
10 department. The application (~~shall~~) must contain information
11 regarding the location of the investment project, the applicant's
12 average employment in the state for the prior year, estimated or actual
13 new employment related to the project, estimated or actual wages of
14 employees related to the project, estimated or actual costs, time
15 schedules for completion and operation, and other information required
16 by the department. The department (~~shall~~) must rule on the
17 application within sixty days.

18 (2) This section expires July 1, 2020.

19 **Sec. 6.** RCW 82.60.040 and 2004 c 25 s 4 are each amended to read
20 as follows:

21 (1) The department (~~shall~~) must issue a sales and use tax
22 deferral certificate for state and local sales and use taxes due under
23 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment
24 project (~~that is located in an eligible area as defined in RCW~~
25 ~~82.60.020~~)).

26 (2) The department (~~shall~~) must keep a running total of all
27 deferrals granted under this chapter during each fiscal biennium.

28 (3) This section expires July 1, (~~2010~~) 2020.

29 **Sec. 7.** RCW 82.60.049 and 2004 c 25 s 5 are each amended to read
30 as follows:

31 (1) For the purposes of this section:

32 (a) "Eligible area" also means: Through June 30, 2010, a
33 designated community empowerment zone approved under RCW 43.31C.020 or
34 a county containing a community empowerment zone; and beginning July 1,

1 2010, a designated community empowerment zone approved under RCW
2 43.31C.020.

3 (b) "Eligible investment project" also means an investment project
4 in an eligible area as defined in this section.

5 (2) In addition to the provisions of RCW 82.60.040, the department
6 (~~shall~~) must issue a sales and use tax deferral certificate for state
7 and local sales and use taxes due under chapters 82.08, 82.12, and
8 82.14 RCW, on each eligible investment project that is located in an
9 eligible area, if the applicant establishes that at the time the
10 project is operationally complete:

11 (a) The applicant will hire at least one qualified employment
12 position for each seven hundred fifty thousand dollars of investment
13 for which a deferral is requested; and

14 (b) The positions will be filled by persons who at the time of hire
15 are residents of the community empowerment zone. As used in this
16 subsection, "resident" means the person makes his or her home in the
17 community empowerment zone. A mailing address alone is insufficient to
18 establish that a person is a resident for the purposes of this section.
19 The persons must be hired after the date the application is filed with
20 the department.

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

23 (4) The qualified employment position must be filled by the end of
24 the calendar year following the year in which the project is certified
25 as operationally complete. If a person does not meet the requirements
26 for qualified employment positions by the end of the second calendar
27 year following the year in which the project is certified as
28 operationally complete, all deferred taxes are immediately due.

29 **Sec. 8.** RCW 82.60.060 and 2000 c 106 s 5 are each amended to read
30 as follows:

31 (1) The recipient (~~shall~~) must begin paying the deferred taxes in
32 the third year after the date certified by the department as the date
33 on which the (~~construction~~) investment project has been operationally
34 completed. The first payment will be due on December 31st of the third
35 calendar year after such certified date, with subsequent annual
36 payments due on December 31st of the following four years with amounts
37 of payment scheduled as follows:

	Repayment Year	% of Deferred Tax Repaid
1		
2	1	10%
3	2	15%
4	3	20%
5	4	25%
6	5	30%

7 (2) The department may authorize an accelerated repayment schedule
8 upon request of the recipient.

9 (3) Interest (~~shall~~) may not be charged on any taxes deferred
10 under this chapter for the period of deferral, although all other
11 penalties and interest applicable to delinquent excise taxes may be
12 assessed and imposed for delinquent payments under this chapter. The
13 debt for deferred taxes will not be extinguished by insolvency or other
14 failure of the recipient. Transfer of ownership does not terminate the
15 deferral. The deferral is transferred, subject to the successor
16 meeting the eligibility requirements of this chapter, for the remaining
17 periods of the deferral.

18 **Sec. 9.** RCW 82.60.070 and 2004 c 25 s 7 are each amended to read
19 as follows:

20 (1)(a) The legislature finds that accountability and effectiveness
21 are important aspects of setting tax policy. In order to make policy
22 choices regarding the best use of limited state resources the
23 legislature needs information on how a tax incentive is used.

24 (b) Each recipient of a deferral granted under this chapter after
25 June 30, 1994, (~~shall~~) must complete an annual survey. If the
26 economic benefits of the deferral are passed to a lessee as provided in
27 (~~RCW 82.60.020(4)~~) section 4 of this act, the lessee (~~shall agree~~
28 ~~to~~) must complete the annual survey and the applicant is not required
29 to complete the annual survey. The survey is due by March 31st of the
30 year following the calendar year in which the investment project is
31 certified by the department as having been operationally complete and
32 the seven succeeding calendar years. The survey (~~shall~~) must include
33 the amount of tax deferred, the number of new products or research
34 projects by general classification, and the number of trademarks,

1 patents, and copyrights associated with activities at the investment
2 project. The survey (~~shall~~) must also include the following
3 information for employment positions in Washington:

4 (i) The number of total employment positions;

5 (ii) Full-time, part-time, and temporary employment positions as a
6 percent of total employment;

7 (iii) The number of employment positions according to the following
8 wage bands: Less than thirty thousand dollars; thirty thousand dollars
9 or greater, but less than sixty thousand dollars; and sixty thousand
10 dollars or greater. A wage band containing fewer than three
11 individuals may be combined with another wage band; and

12 (iv) The number of employment positions that have employer-provided
13 medical, dental, and retirement benefits, by each of the wage bands.

14 (c) As part of the survey, the department may request additional
15 information necessary to measure the results of, or determine
16 eligibility for, the deferral program, to be submitted at the same time
17 as the survey.

18 (d) All information collected under this subsection, except the
19 amount of the tax deferral taken, is deemed taxpayer information under
20 RCW 82.32.330 and is not disclosable. Information on the amount of tax
21 deferral taken is not subject to the confidentiality provisions of RCW
22 82.32.330 and may be disclosed to the public upon request.

23 (e) The department (~~shall~~) must use the information from this
24 section to prepare summary descriptive statistics by category. No
25 fewer than three taxpayers (~~shall~~) may be included in any category.
26 The department (~~shall~~) must report these statistics to the
27 legislature each year by September 1st.

28 (f) The department (~~shall~~) must also use the information to study
29 the tax deferral program authorized under this chapter. The department
30 (~~shall~~) must report to the legislature by December 1, (~~2009~~) 2019.
31 The report (~~shall~~) must measure the effect of the program on job
32 creation, the number of jobs created for residents of eligible areas,
33 company growth, the introduction of new products, the diversification
34 of the state's economy, growth in research and development investment,
35 the movement of firms or the consolidation of firms' operations into
36 the state, and such other factors as the department selects.

37 (2)(a) If, on the basis of a survey under this section or other

1 information, the department finds that an investment project is not
2 eligible for tax deferral under this chapter, the amount of deferred
3 taxes outstanding for the project (~~shall be immediately due~~).

4 (b) If a recipient of the deferral fails to complete the annual
5 survey required under subsection (1) of this section by the date due,
6 twelve and one-half percent of the deferred tax (~~shall~~) will be
7 immediately due. If the economic benefits of the deferral are passed
8 to a lessee as provided in (~~RCW 82.60.020(4)~~) section 4 of this act,
9 the lessee (~~shall be~~) is responsible for payment to the extent the
10 lessee has received the economic benefit.

11 (3) Notwithstanding any other subsection of this section, deferred
12 taxes need not be repaid on machinery and equipment for lumber and wood
13 products industries, and sales of or charges made for labor and
14 services, of the type which qualifies for exemption under RCW
15 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
16 before July 1, 1995.

17 (4) Notwithstanding any other subsection of this section, deferred
18 taxes on the following need not be repaid:

19 (a) Machinery and equipment, and sales of or charges made for labor
20 and services, which at the time of purchase would have qualified for
21 exemption under RCW 82.08.02565; and

22 (b) Machinery and equipment which at the time of first use would
23 have qualified for exemption under RCW 82.12.02565.

24 **Sec. 10.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to read
25 as follows:

26 Applications, reports, and any other information received by the
27 department under this chapter (~~shall~~), except applications not
28 approved by the department, are not (~~be~~) confidential and (~~shall~~
29 ~~be~~) are subject to disclosure.

30 **Sec. 11.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read
31 as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

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

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

1 (3) "Eligible area" means (~~(an area)~~) a "rural county" as defined
2 in RCW (~~(82.60.020)~~) 82.14.370.

3 (4)(a) "Eligible business project" means manufacturing or research
4 and development activities which are conducted by an applicant in an
5 eligible area at a specific facility, provided the applicant's average
6 qualified employment positions at the specific facility will be at
7 least fifteen percent greater in the four consecutive full calendar
8 quarters after the calendar quarter during which the first qualified
9 employment position is filled than the applicant's average qualified
10 employment positions at the same facility in the four consecutive full
11 calendar quarters immediately preceding the calendar quarter during
12 which the first qualified employment position is filled.

13 (b) "Eligible business project" does not include any portion of a
14 business project undertaken by a light and power business as defined in
15 RCW 82.16.010(~~(+5)~~) (4) or that portion of a business project creating
16 qualified full-time employment positions outside an eligible area.

17 (5) "First qualified employment position" means the first qualified
18 employment position filled for which a credit under this chapter is
19 sought.

20 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
21 "Manufacturing" also includes:

22 (a) Before July 1, 2010: (i) Computer programming, the production
23 of computer software, and other computer-related services, but only
24 when the computer programming, production of computer software, or
25 other computer-related services are performed by a manufacturer as
26 defined in RCW 82.04.110 and contribute to the production of a new,
27 different, or useful substance or article of tangible personal property
28 for sale; and (ii) the activities performed by research and development
29 laboratories and commercial testing laboratories; and

30 (b) Beginning July 1, 2010, the activities performed by research
31 and development laboratories and commercial testing laboratories.

32 (7) "Person" has the meaning given in RCW 82.04.030.

33 (8)(a)(i) "Qualified employment position" means a permanent full-
34 time employee employed in the eligible business project during four
35 consecutive full calendar quarters.

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

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

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

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

8 (ii) During a vacancy, the employer is training or actively
9 recruiting a replacement permanent, full-time employee for the
10 position.

11 (9) "Recipient" means a person receiving tax credits under this
12 chapter.

13 (10) "Research and development" means the development, refinement,
14 testing, marketing, and commercialization of a product, service, or
15 process before commercial sales have begun, but only when such
16 activities are intended to ultimately result in the production of a
17 new, different, or useful substance or article of tangible personal
18 property for sale. As used in this subsection, "commercial sales"
19 excludes sales of prototypes or sales for market testing if the total
20 gross receipts from such sales of the product, service, or process do
21 not exceed one million dollars.

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

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

28 NEW SECTION. **Sec. 12.** RCW 82.60.900 and 82.60.901 are each
29 decodified.

30 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
33 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
34 5, & 1985 c 232 s 10; and

35 (2) RCW 82.60.110 (Competing projects--Impact study) and 1998 c 245
36 s 169 & 1994 sp.s. c 1 s 8.

1 NEW SECTION. **Sec. 14.** The amendments to the definitions of
2 "manufacturing" and "research and development" in sections 2 and 11 of
3 this act apply retroactively as well as prospectively.

4 NEW SECTION. **Sec. 15.** Except for section 3 of this act, this act
5 takes effect July 1, 2010."

6 Correct the title.

EFFECT: Eliminates the provision providing relief from paying deferred taxes during a temporary shutdown under certain conditions. Authorizes the rural county sales and use tax deferral program in areas designated as community empowerment zones. Removes sections that are unnecessary due to the passage of an administrative bill.

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