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**SUBSTITUTE SENATE BILL 5029**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Business, Financial Services & Trade (originally sponsored by Senators Honeyford and Short)

AN ACT Relating to tax deferrals for investment projects in high unemployment counties; amending RCW 82.60.010, 82.60.020, 82.60.049, 82.60.070, and 82.60.120; adding new sections to chapter 82.60 RCW; repealing RCW 82.60.060 and 82.60.065; providing an effective date; providing expiration dates; and declaring an emergency.

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

**Sec.**  RCW 82.60.010 and 2010 1st sp.s. c 16 s 1 are each amended to read as follows:

The legislature finds that there are ((~~several areas~~)) counties in the state that ((~~are characterized by very high levels of unemployment and poverty~~)) experience chronically high levels of unemployment and that state policies are necessary to promote economic stimulation and new employment opportunities in these counties. The legislature further finds that ((~~economic stagnation is the primary cause of this high unemployment rate and poverty; that new state policies are necessary in order to promote economic stimulation and new employment opportunities in these distressed areas; and that policies providing incentives for economic growth in these distressed areas are essential~~)) firms participating in a tax deferral program in high unemployment counties created more jobs and experienced higher levels of income growth than firms that did not participate in the deferral. For these reasons, the legislature reestablishes a tax deferral program to be effective solely in ((~~distressed~~)) counties experiencing high levels of unemployment. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and reducing poverty in ((~~the distressed~~)) counties experiencing levels of unemployment that are higher than those of the state.

**Sec.**  RCW 82.60.020 and 2010 1st sp.s. c 16 s 2 are each amended to read as follows:

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

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

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

(3) "Eligible area" means((~~:~~

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

~~(b) Beginning July 1, 2010,~~)) a qualifying county.

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

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

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

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

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

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

~~(b) Beginning July 1, 2010: (i)~~)) The activities performed by research and development laboratories and commercial testing laboratories; and ((~~(ii) the~~))

(b) The conditioning of vegetable seeds.

(8) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

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

((~~(9)~~)) (10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

((~~(10)~~)) (11) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of ((~~twelve~~)) 12 consecutive months. The term "full-time" means at least ((~~thirty-five~~)) 35 hours a week, ((~~four hundred fifty-five~~)) 455 hours a quarter, or ((~~one thousand eight hundred twenty~~)) 1,820 hours a year.

((~~(11)~~)) (12) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

((~~(12)~~)) (13) "Qualifying county" means a county that has an unemployment rate, as determined by the employment security department, which is at least ((~~twenty~~)) 20 percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be, as provided in RCW 82.60.120.

((~~(13)~~)) (14) "Recipient" means a person receiving a tax deferral under this chapter.

((~~(14)~~)) (15) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

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

(1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2031.

(3) This section expires July 1, 2031.

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

(1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium. The amount of state and local sales and use taxes eligible for deferral under this chapter is limited to $400,000 per eligible investment project per person.

(3) This section expires July 1, 2031.

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

(1) The recipient of a deferral certificate under section 4 of this act must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the deferral certificate issued under section 4 of this act is invalid and taxes deferred under this chapter are due immediately.

**Sec.**  RCW 82.60.049 and 2010 1st sp.s. c 16 s 7 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

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

(2) In addition to the provisions of ((~~RCW 82.60.040~~)) section 4 of this act, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of investment for which a deferral is requested; and

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

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

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

**Sec.**  RCW 82.60.070 and 2017 c 135 s 36 are each amended to read as follows:

(1)(a) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534 during the period covered by the schedule under subsection (2) of this section. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(b) The ((~~department~~)) joint legislative audit and review committee, as part of its tax preference review process under chapter 43.136 RCW, must use the information reported on the annual tax performance report required by this section to study the tax deferral program authorized under this chapter. The ((~~department~~)) committee must report to the legislature by December 1, ((~~2018~~)) 2028. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as the ((~~department~~)) committee selects.

(2) ((~~Except as provided in RCW 82.60.063, if, on the basis of a tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project, according to the repayment schedule in RCW 82.60.060, is immediately due.~~)) (a) Except as otherwise provided in this chapter, taxes deferred under this chapter need not be repaid.

(b) If the investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than a qualified manufacturing or research and development operation at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

|  |  |
| --- | --- |
| Year in which  use occurs | % of deferred taxes due |
| 1 | 100% |
| 2 | 87.5% |
| 3 | 75% |
| 4 | 62.5% |
| 5 | 50% |
| 6 | 37.5% |
| 7 | 25% |
| 8 | 12.5% |

(c) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For purposes of ((~~this~~)) subsection (2) of this section, the repayment schedule ((~~in RCW 82.60.060~~)) is tolled during the period of time that a taxpayer is receiving relief from repayment of deferred taxes under RCW 82.60.063.

((~~(3)~~)) (4) A recipient who must repay deferred taxes under subsection ((~~(2)~~)) (3) of this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes.

((~~(4)~~)) (5) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under subsection (3) of this section because the department has found that an investment project is not eligible for tax deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(6) Notwithstanding any other provision of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

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

**Sec.**  RCW 82.60.120 and 2010 1st sp.s. c 16 s 3 are each amended to read as follows:

The department, with the assistance of the employment security department, must establish a list of qualifying counties, effective July 1, ((~~2010~~)) 2021. The list of qualifying counties is effective for a ((~~twenty-four~~)) 24-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be.

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

(1)RCW 82.60.060 (Repayment schedule) and 2010 1st sp.s. c 16 s 8, 2000 c 106 s 5, & 1985 c 232 s 5; and

(2)RCW 82.60.065 (Tax deferral on construction labor and investment projects—Repayment forgiven) and 1995 1st sp.s. c 3 s 8, 1994 sp.s. c 1 s 6, & 1986 c 116 s 14.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021.

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