

# SENATE BILL REPORT

## SB 5744

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As Reported by Senate Committee On:  
Environment, Energy & Technology, February 2, 2022

**Title:** An act relating to tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

**Brief Description:** Concerning tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

**Sponsors:** Senators Nguyen, Carlyle, Conway, Das, Kuderer, Mullet, Nobles, Pedersen, Saldaña and Trudeau; by request of Office of Financial Management.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/19/22, 2/02/22 [DPS-WM, DNP].

### Brief Summary of First Substitute Bill

- Defers state and local sales and use taxes for an investment project in either qualified buildings or qualified machinery and equipment, or both, for new, renovated, or expanded manufacturing operations, including zero-emission vehicles and electricity from renewable resources; facilities that produce clean fuels; and storage facilities for energy or green or electrolytic hydrogen .
- Reduces the amount of state sales and use tax to be repaid if the recipient complies with specified labor standards.
- Directs the Department of Revenue to stop accepting new applications for the deferral after June 30, 2032.

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 5744 be substituted therefor, and the

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substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Lovick, Nguyen, Sheldon, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senator Fortunato.

**Staff:** Kimberly Cushing (786-7421)

**Background:** Retail Sales and Use Taxes. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. The use tax is imposed on items used in the state that were not subject to the retail sales tax. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Tax Deferral Programs. Deferral programs provide businesses the ability to postpone payment of sales and use taxes based on meeting specific requirements and performance criteria. Some deferral programs require repayment. Once an application for a deferral program is filed and approved, businesses will be granted a tax deferral certificate which must be provided to vendors and contractors to defer sales or use tax.

Clean Energy Transformation Act. In 2019, the Legislature passed the Clean Energy Transformation Act (CETA), which requires Washington's electric utilities to meet 100 percent of their retail electric load using non-emitting and renewable resources by January 1, 2045. CETA requires electric utilities to eliminate coal-fired resources from their allocation of electricity by December 31, 2025, and make all retail sales of electricity greenhouse gas (GHG) neutral by January 1, 2030.

Clean Fuels Program. In 2021, the Legislature directed the Department of Ecology to adopt rules establishing a Clean Fuels Program to reduce the carbon intensity of transportation fuels to 20 percent below 2017 levels by 2038. The program will begin in January 2023.

**Summary of Bill (First Substitute):** State and Local Sales and Use Tax Deferral. The Department of Revenue (DOR) must issue a sales and use tax deferral certificate for state and local sales and uses taxes on each eligible investment project (project). The certificate may only be used to make purchases of materials and equipment, labor, or services to be incorporated in the project at the specified location.

A project is defined as an investment project of at least \$2 million in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

- manufacturing operations for tangible personal property incorporated as an ingredient or component of or used in the generation of:

- specified zero-emission vehicles;
- charging and fueling infrastructure for zero-emission vehicles;
- renewable and green electrolytic hydrogen;
- clean fuel with associated greenhouse gas emissions not exceeding 80 percent of 2017 levels;
- electricity from renewable resources; or
- storage facilities for energy or green or electrolytic hydrogen;
- facilities to produce clean fuels or renewable and green electrolytic hydrogen; or
- storage facilities for energy or green or electrolytic hydrogen.

An application for deferral of taxes must be made to DOR before initiation of the construction of the project or acquisition of equipment or machinery. The application must be made in a form and manner prescribed by DOR, and contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimate or actual new employment and wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by DOR.

DOR must rule on the application within 60 days and keep a running total of all deferrals granted during each fiscal biennium. No certificate may be issued for a project that has already received a deferral under specified programs. DOR may not accept applications for a tax deferral after June 30, 2032.

The recipient of a deferral certificate must begin meaningful construction on a project within two years of receiving the certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered such a circumstance. If the recipient does not begin meaningful construction within two years, the certificate is invalid and the deferred taxes are due immediately.

Repayment of Deferred Taxes. The recipient must begin paying the deferred taxes on December 31st of the second year after the project has been operationally completed as certified by DOR. The first payment is 10 percent of deferred taxes, with subsequent annual payments of 10 percent due on December 31st for the following nine years. For the period of deferral, interest may not be charged on any deferred taxes. DOR may authorize an accelerated repayment schedule if requested by the recipient.

DOR must assess interest at the rate provided for delinquent taxes retroactively to the date of deferral. Debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. If ownership is transferred, the deferral is also transferred subject to the successor meeting the eligibility requirements for the remaining period of the deferral.

If the project is not operationally complete within five years of being issued the tax deferral certificate, or DOR finds a project is used for purposes other than those specified at any time during the year the project was certified as being operational or during the repayment

period, a portion of deferred taxes is due according to a declining schedule.

The recipient of the tax deferral must receive a reduction of the amount of state sales and use taxes to be repaid as follows:

- 50 percent if the procurement and contract was from an organization owned by women, minorities, or veterans, and entities that have a history of complying with federal and state wage and hour laws; apprenticeship utilization; and preferred entry workers living in the project construction area;
- 75 percent if, in addition to the previous standard, workers on the project were compensated at prevailing wages determined by local collective bargaining; or
- 100 percent if the project is developed under a community workforce agreement or project labor agreement.

The recipient must repay all local sales and use taxes.

The Department of Labor and Industries (L&I) must adopt emergency and permanent rules to define and set minimum requirements for the tiered labor standards. L&I must also set requirements for good faith efforts under the 50 and 75 percent state sales and use tax reduction categories.

The recipient of the deferral must consult with the Office of Minority and Women's Business Enterprises under the standards for procurement from and contract with woman and minority-owned businesses. The recipient of the deferral must consult with the Department of Veterans Affairs under the standards for procurement from and contract with veteran-owned businesses. L&I must consult with the Office of Minority and Women's Business Enterprises, Department of Veterans Affairs, and Washington Apprenticeship and Training Council in setting standards and good faith efforts.

Each recipient of a tax deferral must file a complete annual tax performance report with DOR as required under current law beginning the first calendar year after the project is operationally complete and continue through final repayment. If economic benefits of the deferral are passed to a lessee, the lessee must file the report.

A lessor or owner of a building is only eligible for a tax deferral if the underlying ownership of the building, machinery, and equipment vests in the same person, or the lessor agrees to pass the economic benefit of the deferral to the lessee. The economic benefit is no less than the amount of tax deferred.

Miscellaneous. A tax preference performance statement is not required under this bill.

**EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):**

Removes Sections 10 and 11, allowing the current sales and use tax exemptions for renewable hydrogen production facilities to remain.

Adds provisions requiring L&I to adopt emergency and permanent rules to define and set minimum requirements for the labor standards and set requirements for good faith efforts identified in the state sales and use tax reductions for specified labor standards.

Adds a definition of storage facility to replace the reference to facilities or equipment that store electricity generated from renewable resources. Storage facility means a facility to (a) accept electricity as an energy source and uses a chemical, thermal, mechanical or other process to store energy for subsequent delivery or consumption in the form of electricity; or (b) store renewable hydrogen or green electrolytic hydrogen for subsequent delivery or consumption.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill takes effect on July 1, 2022.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The goal is to incentivize clean technology and to promote and grow clean technology industry, storage facilities, and biofuels facilities. Washington has the most robust climate and energy goals in the country and needs innovative clean energy laws. We want to amend the bill to broaden the definition of energy storage and enable tax incentives to continue through their expiration. We appreciate the recognition of hydrogen. The bill will add to a suite of policies that the Legislature has adopted over the last few years. Electrolyzers are key to eliminating carbon dioxide from the economy. This will bring jobs to Washington. The tiered incentives will ensure good trained workers at facilities. The labor provisions protect workers, create family wage jobs, create fluid standards across industry, and will drive innovation across rural communities. The bill will better position the manufacturing sector to meet the demands of the energy and transportation sectors as they adjust to the norms of the green economy. Every dollar the public foregoes in tax collection will be spent in high wage jobs.

CON: The owners of the projects should be able to work with whatever contractor they want. The bill is mandating union-only contractors, and one-half of the contractors in the industry won't be able to participate in the projects. We would like to remove the project labor agreement requirement.

OTHER: The bill should not be limited to green hydrogen. Blue carbon is the most valuable carbon sink at our disposal. Even grey hydrogen can assist with the early use of technology and enable the development of the infrastructure.

**Persons Testifying:** PRO: Senator Joe Nguyen, Prime Sponsor; Becky Kelley, Office of Governor Jay Inslee; matt Steuerwalt, Nextera Energy Resources; Dave Warren, Washington Green Hydrogen Alliance, Renewable Hydrogen Alliance; Blake Putney, HydroStar; Brian Young, WA Department of Commerce; Kelly Hall; Becky Kelley, Office of the Governor; Brian Young, Dept. of Commerce - Office of Economic Development and Competitiveness; Erin Frasier, WA State Building & Construction Trades Council; Matthew Hepner, IBEW/ceww; Joe Kendo, Washington State Labor Council, AFL-CIO.

CON: Jerry VanderWood, Associated General Contractors of WA; Mike Ennis, Association of Washington Business .

OTHER: Jessica Spiegel, WSPA.

**Persons Signed In To Testify But Not Testifying:** No one.