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SENATE BILL 6452

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State of Washington

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1998 Regular Session

By Senators Snyder, Winsley, Kohl, Loveland, T. Sheldon, Goings, B. Sheldon, Patterson and Bauer; by request of Governor Locke

Read first time 01/19/98. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing a tax incentive to build facilities to  
2 be used by biotechnology businesses; amending RCW 82.63.010 and  
3 82.63.045; adding a new section to chapter 82.63 RCW; creating a new  
4 section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that biotechnology  
7 businesses often lack the start-up capital to build their own  
8 laboratories. The building industry has indicated a willingness to  
9 build, on a speculative basis, facilities for the biotechnology  
10 industry. The various exemption and deferral programs currently in law  
11 are specifically directed to the operators of the facilities or to  
12 lessors who in advance of construction or acquisition agree to pass the  
13 benefit of the incentive to the tenant. Speculative building does not  
14 qualify for any of the exemption or deferral programs. It is the  
15 intent of the legislature to allow speculative builders to be exempt  
16 from sales and use tax on the construction of laboratory space for this  
17 uniquely situated industry segment.

1       **Sec. 2.** RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended  
2 to read as follows:

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

5       (1) "Advanced computing" means technologies used in the designing  
6 and developing of computing hardware and software, including  
7 innovations in designing the full spectrum of hardware from hand-held  
8 calculators to super computers, and peripheral equipment.

9       (2) "Advanced materials" means materials with engineered properties  
10 created through the development of specialized processing and synthesis  
11 technology, including ceramics, high value-added metals, electronic  
12 materials, composites, polymers, and biomaterials.

13       (3) "Applicant" means a person applying for a tax deferral under  
14 this chapter.

15       (4) "Biotechnology" means the application of technologies, such as  
16 recombinant DNA techniques, biochemistry, molecular and cellular  
17 biology, genetics and genetic engineering, cell fusion techniques, and  
18 new bioprocesses, using living organisms, or parts of organisms, to  
19 produce or modify products, to improve plants or animals, to develop  
20 microorganisms for specific uses, to identify targets for small  
21 molecule pharmaceutical development, or to transform biological systems  
22 into useful processes and products or to develop microorganisms for  
23 specific uses.

24       (5) "Department" means the department of revenue.

25       (6) "Electronic device technology" means technologies involving  
26 microelectronics; semiconductors; electronic equipment and  
27 instrumentation; radio frequency, microwave, and millimeter  
28 electronics; optical and optic-electrical devices; and data and digital  
29 communications and imaging devices.

30       (7) "Eligible investment project" means an investment project which  
31 either initiates a new operation, or expands or diversifies a current  
32 operation by expanding, renovating, or equipping an existing facility.  
33 Except as provided in section 3 of this act for builders of qualified  
34 buildings used for biotechnology research and development, the lessor  
35 or owner of the qualified building is not eligible for a deferral  
36 unless the underlying ownership of the buildings, machinery, and  
37 equipment vests exclusively in the same person, or unless the lessor by  
38 written contract agrees to pass the economic benefit of the deferral to  
39 the lessee in the form of reduced rent payments.

1 (8) "Environmental technology" means assessment and prevention of  
2 threats or damage to human health or the environment, environmental  
3 cleanup, and the development of alternative energy sources.

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

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

9 (11) "Pilot scale manufacturing" means design, construction, and  
10 testing of preproduction prototypes and models in the fields of  
11 biotechnology, advanced computing, electronic device technology,  
12 advanced materials, and environmental technology other than for  
13 commercial sale. As used in this subsection, "commercial sale"  
14 excludes sales of prototypes or sales for market testing if the total  
15 gross receipts from such sales of the product, service, or process do  
16 not exceed one million dollars.

17 (12) "Qualified buildings" means construction of new structures,  
18 and expansion or renovation of existing structures for the purpose of  
19 increasing floor space or production capacity used for pilot scale  
20 manufacturing or qualified research and development, including plant  
21 offices and other facilities that are an essential or an integral part  
22 of a structure used for pilot scale manufacturing or qualified research  
23 and development. If a building is used partly for pilot scale  
24 manufacturing or qualified research and development, and partly for  
25 other purposes, the applicable tax deferral shall be determined by  
26 apportionment of the costs of construction under rules adopted by the  
27 department.

28 (13) "Qualified machinery and equipment" means fixtures, equipment,  
29 and support facilities that are an integral and necessary part of a  
30 pilot scale manufacturing or qualified research and development  
31 operation. "Qualified machinery and equipment" includes: Computers;  
32 software; data processing equipment; laboratory equipment,  
33 instrumentation, and other devices used in a process of experimentation  
34 to develop a new or improved pilot model, plant process, product,  
35 formula, invention, or similar property; manufacturing components such  
36 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;  
37 vats, tanks, and fermenters; operating structures; and all other  
38 equipment used to control, monitor, or operate the machinery. For  
39 purposes of this chapter, qualified machinery and equipment must be

1 either new to the taxing jurisdiction of the state or new to the  
2 certificate holder, except that used machinery and equipment may be  
3 treated as qualified machinery and equipment if the certificate holder  
4 either brings the machinery and equipment into Washington or makes a  
5 retail purchase of the machinery and equipment in Washington or  
6 elsewhere.

7 (14) "Qualified research and development" means research and  
8 development performed within this state in the fields of advanced  
9 computing, advanced materials, biotechnology, electronic device  
10 technology, and environmental technology.

11 (15) "Recipient" means a person receiving a tax deferral under this  
12 chapter.

13 (16) "Research and development" means activities performed to  
14 discover technological information, and technical and nonroutine  
15 activities concerned with translating technological information into  
16 new or improved products, processes, techniques, formulas, inventions,  
17 or software. The term includes exploration of a new use for an  
18 existing drug, device, or biological product if the new use requires  
19 separate licensing by the federal food and drug administration under  
20 chapter 21, C.F.R., as amended. The term does not include adaptation  
21 or duplication of existing products where the products are not  
22 substantially improved by application of the technology, nor does the  
23 term include surveys and studies, social science and humanities  
24 research, market research or testing, quality control, sale promotion  
25 and service, computer software developed for internal use, and research  
26 in areas such as improved style, taste, and seasonal design.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.63 RCW  
28 to read as follows:

29 (1) A person who proposes to construct a new qualified building or  
30 renovate an existing qualified building, for biotechnology research and  
31 development, may submit an application for an investment project to the  
32 department of revenue. The department shall issue a sales and use tax  
33 deferral certificate for state and local sales and use taxes due under  
34 chapters 82.08, 82.12, and 82.14 RCW on the eligible investment project  
35 provided that the building meets the following criteria:

36 (a) The building has an airflow capacity of twelve to fifteen air  
37 changes per hour and the air must be one hundred percent outside air;

1 (b) The following fire protection systems and standards must be in  
2 place:

3 (i) All areas of the building are covered by automatic fire  
4 detection and fire suppression systems;

5 (ii) The fire suppression system is designed to an "ordinary hazard  
6 group II" classification level;

7 (iii) The hazardous materials storage rooms have a sprinkler system  
8 designed for "extra hazard group II";

9 (iv) Laboratory areas are defined by at least one hour firewall  
10 separations;

11 (c) The minimum total electrical capacity for the building must be  
12 twenty-five watts per square foot;

13 (d) The chemical storage and handling rooms and waste storage and  
14 recycling activities must be designed to meet "H occupancy" of the  
15 uniform building code;

16 (e) A separate hot and cold water supply should be provided to  
17 serve the laboratory areas with code-approved backflow prevention at  
18 the connection to the building or municipal water system;

19 (f) Floor to floor height for new construction should be at least  
20 fifteen feet and for renovations should be at least thirteen feet; and

21 (g) The building is intended for use as a biotechnology research  
22 and development facility.

23 (2) A person to whom a certificate is issued under this section is  
24 subject to all requirements of this chapter except the recipient is not  
25 required to have a signed agreement with a tenant before initiation of  
26 construction nor is the recipient required to pass the economic benefit  
27 of the deferral to the lessee in the form of reduced rent payments. If  
28 the certificate holder transfers ownership of the building before the  
29 end of the eight-year period in RCW 82.63.045, taxes are immediately  
30 due unless the purchaser agrees to accept the conditions of the  
31 deferral. This agreement shall be in writing and a copy of it shall be  
32 transmitted to the department.

33 **Sec. 4.** RCW 82.63.045 and 1995 1st sp.s. c 3 s 13 are each amended  
34 to read as follows:

35 (1) Except as provided in subsection (2) of this section, taxes  
36 deferred under this chapter need not be repaid.

37 (2) If, on the basis of a report under RCW 82.63.020 or other  
38 information, the department finds that an investment project eligible

1 under section 3 of this act is not used for biotechnology research and  
2 development or that ((an)) any other investment project is used for  
3 purposes other than qualified research and development or pilot scale  
4 manufacturing at any time during the calendar year in which the  
5 investment project is certified by the department as having been  
6 operationally completed, or at any time during any of the seven  
7 succeeding calendar years, a portion of deferred taxes shall be  
8 immediately due according to the following schedule:

9	Year in which use occurs	% of deferred taxes due
10	1	100%
11	2	87.5%
12	3	75%
13	4	62.5%
14	5	50%
15	6	37.5%
16	7	25%
17	8	12.5%

18 The department shall assess interest at the rate provided for  
19 delinquent taxes, but not penalties, retroactively to the date of  
20 deferral.

21 (3) Notwithstanding subsection (2) of this section, deferred taxes  
22 on the following need not be repaid:

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

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

28 NEW SECTION. **Sec. 5.** This act takes effect July 1, 1998.

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