

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 3014

61st Legislature
2010 1st Special Session

Passed by the House April 2, 2010
Yeas 83 Nays 6

Speaker of the House of Representatives

Passed by the Senate March 25, 2010
Yeas 43 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 3014** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 3014

AS AMENDED BY THE SENATE

Passed Legislature - 2010 1st Special Session

State of Washington **61st Legislature** **2010 Regular Session**

By House Finance (originally sponsored by Representatives Kessler, Morrell, and Van De Wege; by request of Governor Gregoire)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to modifying the sales and use tax deferral program
2 for investment projects in rural counties; amending RCW 82.60.010,
3 82.60.020, 82.60.030, 82.60.040, 82.60.049, 82.60.060, 82.60.070, and
4 82.62.010; adding new sections to chapter 82.60 RCW; creating a new
5 section; decodifying RCW 82.60.900 and 82.60.901; repealing RCW
6 82.60.050 and 82.60.110; providing an effective date; and providing
7 expiration dates.

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

9 **Sec. 1.** RCW 82.60.010 and 1985 c 232 s 1 are each amended to read
10 as follows:

11 The legislature finds that there are several areas in the state
12 that are characterized by very high levels of unemployment and poverty.
13 The ((legislative—[legislature])) legislature further finds that
14 economic stagnation is the primary cause of this high unemployment rate
15 and poverty; that new state policies are necessary in order to promote
16 economic stimulation and new employment opportunities in these
17 distressed areas; and that policies providing incentives for economic
18 growth in these distressed areas are essential. For these reasons, the
19 legislature ((hereby)) reestablishes a tax deferral program to be

1 effective solely in distressed (~~areas and under circumstances where~~
2 ~~the deferred tax payments are for investments or costs that result in~~
3 ~~the creation of a specified number of jobs~~) counties. The legislature
4 declares that this limited program serves the vital public purpose of
5 creating employment opportunities and reducing poverty in the
6 distressed (~~areas~~) counties of the state.

7 **Sec. 2.** RCW 82.60.020 and 2010 c ... (SHB 3066) s 138 are each
8 amended to read as follows:

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

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

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

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

15 (a) Through June 30, 2010, a rural county as defined in RCW
16 82.14.370; and

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

18 (4)(a) "Eligible investment project" means an investment project
19 that is located, as of the date the application required by RCW
20 82.60.030 is received by the department, in an eligible area as defined
21 in subsection (3) of this section.

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

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

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

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

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

36 ~~(e))~~ "Eligible investment project" does not include any portion of
37 an investment project undertaken by a light and power business as

1 defined in RCW 82.16.010(4), other than that portion of a cogeneration
2 project that is used to generate power for consumption within the
3 manufacturing site of which the cogeneration project is an integral
4 part, or investment projects (~~(which)~~) that have already received
5 deferrals under this chapter.

6 (5) "Initiation of construction" has the same meaning as in RCW
7 82.63.010.

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

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

14 (a) Before July 1, 2010: (i) Computer programming, the production
15 of computer software, and other computer-related services, but only
16 when the computer programming, production of computer software, or
17 other computer-related services are performed by a manufacturer as
18 defined in RCW 82.04.110 and contribute to the production of a new,
19 different, or useful substance or article of tangible personal property
20 for sale; (ii) the activities performed by research and development
21 laboratories and commercial testing laboratories(~~(7)~~); and (iii) the
22 conditioning of vegetable seeds; and

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

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

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

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

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

15 (12) "Qualifying county" means a county that has an unemployment
16 rate, as determined by the employment security department, which is at
17 least twenty percent above the state average for the three calendar
18 years immediately preceding the year in which the list of qualifying
19 counties is established or updated, as the case may be, as provided in
20 section 3 of this act.

21 (13) "Recipient" means a person receiving a tax deferral under this
22 chapter.

23 ~~((+13))~~ (14) "Research and development" means the development,
24 refinement, testing, marketing, and commercialization of a product,
25 service, or process before commercial sales have begun, but only when
26 such activities are intended to ultimately result in the production of
27 a new, different, or useful substance or article of tangible personal
28 property for sale. As used in this subsection, "commercial sales"
29 excludes sales of prototypes or sales for market testing if the total
30 gross receipts from such sales of the product, service, or process do
31 not exceed one million dollars.

32 NEW SECTION. Sec. 3. A new section is added to chapter 82.60 RCW
33 to read as follows:

34 The department, with the assistance of the employment security
35 department, must establish a list of qualifying counties effective July
36 1, 2010. The list of qualifying counties is effective for a twenty-

1 four month period and must be updated by July 1st of the year that is
2 two calendar years after the list was established or last updated, as
3 the case may be.

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

6 The lessor or owner of a qualified building is not eligible for a
7 deferral unless:

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

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

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

15 (c) The economic benefit of the deferral passed to the lessee is no
16 less than the amount of tax deferred by the lessor and is evidenced by
17 written documentation of any type of payment, credit, or other
18 financial arrangement between the lessor or owner of the qualified
19 building and the lessee.

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

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

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

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

3 (1) The department (~~shall~~) must issue a sales and use tax
4 deferral certificate for state and local sales and use taxes due under
5 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment
6 project (~~that is located in an eligible area as defined in RCW~~
7 ~~82.60.020~~)).

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

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

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

13 (1) For the purposes of this section:

14 (a) "Eligible area" also means a designated community empowerment
15 zone approved under RCW 43.31C.020 (~~or a county containing a community~~
16 ~~empowerment zone~~)).

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

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

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

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

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

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

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

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

16	Repayment Year	% of Deferred Tax Repaid
17	1	10%
18	2	15%
19	3	20%
20	4	25%
21	5	30%

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

24 (3) Interest (~~shall~~) may not be charged on any taxes deferred
25 under this chapter for the period of deferral, although all other
26 penalties and interest applicable to delinquent excise taxes may be
27 assessed and imposed for delinquent payments under this chapter. The
28 debt for deferred taxes will not be extinguished by insolvency or other
29 failure of the recipient. Transfer of ownership does not terminate the
30 deferral. The deferral is transferred, subject to the successor
31 meeting the eligibility requirements of this chapter, for the remaining
32 periods of the deferral.

1 **Sec. 9.** RCW 82.60.070 and 2010 c ... (SHB 3066) s 139 are each
2 amended to read as follows:

3 (1)(a) Each recipient of a deferral of taxes granted under this
4 chapter must file a complete annual survey with the department under
5 RCW 82.32. . . (section 102, chapter . . . (SHB 3066), Laws of 2010).
6 If the economic benefits of the deferral are passed to a lessee as
7 provided in (~~RCW 82.60.020(4)~~) section 4 of this act, the lessee must
8 file a complete annual survey, and the applicant is not required to
9 file a complete annual survey.

10 (b) The department must use the information reported on the annual
11 survey required by this section to study the tax deferral program
12 authorized under this chapter. The department must report to the
13 legislature by December 1, (~~2009~~) 2019. The report must measure the
14 effect of the program on job creation, the number of jobs created for
15 residents of eligible areas, company growth, the introduction of new
16 products, the diversification of the state's economy, growth in
17 research and development investment, the movement of firms or the
18 consolidation of firms' operations into the state, and such other
19 factors as the department selects.

20 (2) Except as provided in section 10 of this act, if, on the basis
21 of a survey under (~~section~~) RCW 82.32. . . (section 102, chapter . .
22 . (SHB 3066), Laws of 2010) or other information, the department finds
23 that an investment project is not eligible for tax deferral under this
24 chapter, the amount of deferred taxes outstanding for the project
25 (~~is~~), according to the repayment schedule in RCW 82.60.060, is
26 immediately due. For purposes of this subsection (2)(a), the repayment
27 schedule in RCW 82.60.060 is tolled during the period of time that a
28 taxpayer is receiving relief from repayment of deferred taxes under
29 section 10 of this act.

30 (3) A recipient who must repay deferred taxes under subsection (2)
31 of this section because the department has found that an investment
32 project is not eligible for tax deferral under this chapter is no
33 longer required to file annual surveys under RCW 82.32. . . (section
34 102, chapter . . . (SHB 3066), Laws of 2010) beginning on the date an
35 investment project is used for nonqualifying purposes.

36 (4) Notwithstanding any other provision of this section or RCW
37 82.32. . . (section 102, chapter . . . (SHB 3066), Laws of 2010),
38 deferred taxes on the following need not be repaid:

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

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

6 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.60 RCW
7 to read as follows:

8 (1) Subject to the conditions in this section, a person is not
9 liable for the amount of deferred taxes outstanding for an investment
10 project when the person temporarily ceases to use its qualified
11 buildings and qualified machinery and equipment for manufacturing or
12 research and development activities in a county with a population of
13 less than twenty thousand persons for a period not to exceed twenty-
14 four months from the date that the department sent its assessment for
15 the amount of outstanding deferred taxes to the taxpayer.

16 (2) The relief from repayment of deferred taxes under this section
17 does not apply unless the number of qualified employment positions
18 maintained at the investment project after manufacturing or research
19 and development activities are temporarily ceased is at least ten
20 percent of the number of qualified employment positions employed at the
21 investment project at the time the deferral was approved by the
22 department. If a person has been approved for more than one deferral
23 under this chapter, relief from repayment of deferred taxes under this
24 section does not apply unless the number of qualified employment
25 positions maintained at the investment project after manufacturing or
26 research and development activities are temporarily ceased is at least
27 ten percent of the highest number of qualified employment positions at
28 the investment project at the time any of the deferrals were approved
29 by the department. If, at any time during the twenty-four month period
30 after the department has sent the taxpayer an assessment for
31 outstanding deferred taxes resulting from the person temporarily
32 ceasing to use its qualified buildings and qualified machinery and
33 equipment for manufacturing or research and development activities, the
34 number of qualified employment positions falls below the ten percent
35 threshold in this subsection, the amount of deferred taxes outstanding
36 for the project is immediately due.

1 (3) The lessor of an investment project for which a deferral has
2 been granted under this chapter who has passed the economic benefits of
3 the deferral to the lessee is not eligible for relief from the payment
4 of deferred taxes under this section.

5 (4) A person seeking relief from the payment of deferred taxes
6 under this section must apply to the department in a form and manner
7 prescribed by the department. The application required under this
8 subsection must be received by the department within thirty days of the
9 date that the department sent its assessment for outstanding deferred
10 taxes resulting from the person temporarily ceasing to use its
11 qualified buildings and qualified machinery and equipment for
12 manufacturing or research and development activities. The department
13 must approve applications that meet the requirements in this section
14 for relief from the payment of deferred taxes.

15 (5) A person is entitled to relief under this section only once.

16 (6) A person whose application for relief from the payment of
17 deferred taxes has been approved under this section must continue to
18 file an annual survey as required under RCW 82.60.070(1) or any
19 successor statute. In addition, the person must file, in a form and
20 manner prescribed by the department, a report on the status of the
21 business and the outlook for commencing manufacturing or research and
22 development activities.

23 **Sec. 11.** RCW 82.62.010 and 2010 c ... (E2SHB 1597) s 232 are each
24 amended to read as follows:

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

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

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

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

32 (4)(a) "Eligible business project" means manufacturing or research
33 and development activities which are conducted by an applicant in an
34 eligible area at a specific facility, provided the applicant's average
35 qualified employment positions at the specific facility will be at
36 least fifteen percent greater in the four consecutive full calendar
37 quarters after the calendar quarter during which the first qualified

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) During a vacancy, the employer is training or actively
2 recruiting a replacement permanent, full-time employee for the
3 position.

4 (9) "Recipient" means a person receiving tax credits under this
5 chapter.

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

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

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

21 NEW SECTION. **Sec. 12.** RCW 82.60.900 and 82.60.901 are each
22 decodified.

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

25 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
26 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
27 5, & 1985 c 232 s 10; and

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

30 NEW SECTION. **Sec. 14.** Except for section 3 of this act, this act
31 takes effect July 1, 2010.

32 NEW SECTION. **Sec. 15.** The amendments to the definitions of

1 "manufacturing" and "research and development" in sections 2 and 11 of
2 this act apply retroactively as well as prospectively.

--- END ---