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**SUBSTITUTE SENATE BILL 6267**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By Senate Ways & Means** (originally sponsored by Senators Hill and Benton; by request of Office of Financial Management)

READ FIRST TIME 02/11/14.

1       AN ACT Relating to high-technology research and development tax  
2 incentives; amending RCW 82.04.4452 and 82.63.030; creating new  
3 sections; and providing expiration dates.

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

5       NEW SECTION.       **Sec. 1.**       This section is the tax preference  
6 performance statement for the tax credit and tax deferral contained in  
7 sections 2 and 3 of this act. This performance statement is only  
8 intended to be used for subsequent evaluation of the tax preferences.  
9 It is not intended to create a private right of action by any party or  
10 be used to determine eligibility for preferential tax treatment.

11       (1) The legislature categorizes these tax preferences as intended  
12 to improve industry competitiveness and create or retain jobs, as  
13 indicated in RCW 82.32.808(2) (b) and (c).

14       (2) It is the legislature's specific public policy objective to  
15 improve industry competitiveness and create or retain more jobs. It is  
16 the legislature's intent to provide a business and occupation tax  
17 credit for high-technology companies performing research and  
18 development and a sales and use tax deferral for certain construction  
19 and equipment purchases for new and expanding high-technology companies

1 conducting research and development in the fields of advanced  
2 computing, advanced materials, biotechnology, electronic device  
3 technology, or environmental technology, in order to reduce the  
4 business costs of performing research and development in specified  
5 areas and to reduce the cost of certain construction and equipment  
6 purchases used for research and development, thereby encouraging  
7 investments in research and development, thereby increasing the number  
8 of firms in the industry performing research and development  
9 activities, thereby increasing the number of jobs performing research  
10 and development in the high-technology industry.

11 (3) If a review finds that the number of businesses participating  
12 in the credit and deferral programs, and the overall number of jobs for  
13 businesses participating in the credit and deferral programs performing  
14 research and development, have increased compared to the number at the  
15 time of enactment, then the legislature intends to extend the  
16 expiration date of the tax preferences.

17 (4) In order to obtain the data necessary to perform the review in  
18 subsection (3) of this section, the joint legislative audit and review  
19 committee may refer to: (a) Employment data available from the  
20 employment security department; and (b) the North American industrial  
21 code system (NAICS) from the department of revenue.

22 **Sec. 2.** RCW 82.04.4452 and 2010 c 114 s 114 are each amended to  
23 read as follows:

24 (1) In computing the tax imposed under this chapter, a credit is  
25 allowed for each person whose research and development spending during  
26 the year in which the credit is claimed exceeds 0.92 percent of the  
27 person's taxable amount during the same calendar year.

28 (2) The credit is calculated as follows:

29 (a) Determine the greater of the amount of qualified research and  
30 development expenditures of a person or eighty percent of amounts  
31 received by a person other than a public educational or research  
32 institution in compensation for the conduct of qualified research and  
33 development;

34 (b) Subtract 0.92 percent of the person's taxable amount from the  
35 amount determined under (a) of this subsection;

36 (c) Multiply the amount determined under (b) of this subsection by  
37 the following:

1 (i) For the period June 10, 2004, through December 31, 2006, the  
2 person's average tax rate for the calendar year for which the credit is  
3 claimed;

4 (ii) For the calendar year ending December 31, 2007, the greater of  
5 the person's average tax rate for that calendar year or 0.75 percent;

6 (iii) For the calendar year ending December 31, 2008, the greater  
7 of the person's average tax rate for that calendar year or 1.0 percent;

8 (iv) For the calendar year ending December 31, 2009, the greater of  
9 the person's average tax rate for that calendar year or 1.25 percent;

10 (v) For the calendar year ending December 31, 2010, and thereafter,  
11 1.50 percent.

12 For purposes of calculating the credit, if a person's reporting  
13 period is less than annual, the person may use an estimated average tax  
14 rate for the calendar year for which the credit is claimed by using the  
15 person's average tax rate for each reporting period. A person who uses  
16 an estimated average tax rate must make an adjustment to the total  
17 credit claimed for the calendar year using the person's actual average  
18 tax rate for the calendar year when the person files its last return  
19 for the calendar year for which the credit is claimed.

20 (3) Any person entitled to the credit provided in subsection (2) of  
21 this section as a result of qualified research and development  
22 conducted under contract may assign all or any portion of the credit to  
23 the person contracting for the performance of the qualified research  
24 and development.

25 (4) The credit, including any credit assigned to a person under  
26 subsection (3) of this section, must be claimed against taxes due for  
27 the same calendar year in which the qualified research and development  
28 expenditures are incurred. The credit, including any credit assigned  
29 to a person under subsection (3) of this section, for each calendar  
30 year may not exceed the lesser of two million dollars or the amount of  
31 tax otherwise due under this chapter for the calendar year.

32 (5) For any person claiming the credit, including any credit  
33 assigned to a person under subsection (3) of this section, whose  
34 research and development spending during the calendar year in which the  
35 credit is claimed fails to exceed 0.92 percent of the person's taxable  
36 amount during the same calendar year or who is otherwise ineligible,  
37 the department must declare the taxes against which the credit was  
38 claimed to be immediately due and payable. The department must assess

1 interest, but not penalties, on the taxes against which the credit was  
2 claimed. Interest must be assessed at the rate provided for delinquent  
3 excise taxes under chapter 82.32 RCW, retroactively to the date the  
4 credit was claimed, and accrues until the taxes against which the  
5 credit was claimed are repaid. Any credit assigned to a person under  
6 subsection (3) of this section that is disallowed as a result of this  
7 section may be claimed by the person who performed the qualified  
8 research and development subject to the limitations set forth in  
9 subsection (4) of this section.

10 (6) A person claiming the credit provided in this section must file  
11 a complete annual survey with the department under RCW 82.32.585.

12 (7) For the purpose of this section:

13 (a) "Average tax rate" means a person's total tax liability under  
14 this chapter for the calendar year for which the credit is claimed  
15 divided by the taxpayer's total taxable amount under this chapter for  
16 the calendar year for which the credit is claimed.

17 (b) "Qualified research and development expenditures" means  
18 operating expenses, including wages, compensation of a proprietor or a  
19 partner in a partnership as determined under rules adopted by the  
20 department, benefits, supplies, and computer expenses, directly  
21 incurred in qualified research and development by a person claiming the  
22 credit provided in this section. The term does not include amounts  
23 paid to a person other than a public educational or research  
24 institution to conduct qualified research and development. Nor does  
25 the term include capital costs and overhead, such as expenses for land,  
26 structures, or depreciable property.

27 (c) "Qualified research and development" (~~shall have~~) has the  
28 same meaning as in RCW 82.63.010.

29 (d) "Research and development spending" means qualified research  
30 and development expenditures plus eighty percent of amounts paid to a  
31 person other than a public educational or research institution to  
32 conduct qualified research and development.

33 (e) "Taxable amount" means the taxable amount subject to the tax  
34 imposed in this chapter required to be reported on the person's  
35 combined excise tax returns for the calendar year for which the credit  
36 is claimed, less any taxable amount for which a credit is allowed under  
37 RCW 82.04.440.

38 (8) This section expires January 1, (~~2015~~) 2016.

1       **Sec. 3.** RCW 82.63.030 and 2008 c 15 s 4 are each amended to read  
2 as follows:

3       (1) Except as provided in subsection (2) of this section, the  
4 department (~~shall~~) must issue a sales and use tax deferral  
5 certificate for state and local sales and use taxes due under chapters  
6 82.08, 82.12, and 82.14 RCW on each eligible investment project.

7       (2) No certificate may be issued for an investment project that has  
8 already received a deferral under chapter 82.60 RCW or this chapter,  
9 except that an investment project for qualified research and  
10 development that has already received a deferral may also receive an  
11 additional deferral certificate for adapting the investment project for  
12 use in pilot scale manufacturing.

13       (3) This section (~~shall~~) expires January 1, (~~2015~~) 2016.

14       NEW SECTION.       **Sec. 4.** (1) The high-technology research and  
15 development investment working group is established. The working group  
16 consists of the following members:

17       (a) The director of the department of commerce who must serve as  
18 chair of the working group;

19       (b) The director of the department of revenue or his or her  
20 designee;

21       (c) The presidents of the University of Washington and Washington  
22 State University or their designees;

23       (d)(i) One representative from each of the following industries  
24 appointed by the governor:

25           (A) Advanced computing;

26           (B) Advanced materials;

27           (C) Biotechnology;

28           (D) Electronic device technology; and

29           (E) Environmental technology.

30       (ii) A statewide organization representing each of the industries  
31 listed in this subsection (1)(d) must submit a list of three names to  
32 the governor. The governor must make each appointment from each list  
33 submitted or request the statewide organization to submit a new list  
34 with up to three additional names.

35       (2)(a) The working group must develop recommendations for the  
36 legislature that integrates high-technology research and development

1 activities with investments in higher education. At minimum, the  
2 recommendations must include provisions addressing the following:

3 (i) Ways to improve the coordination of research and development  
4 spending with higher education institutions, including:

5 (A) Developing and integrating technology in new or enhanced  
6 products and services, and launching those products and services in  
7 sustainable businesses in Washington state; and

8 (B) Attracting new high-technology research and development  
9 investment at higher education institutions.

10 (ii) The design, size, and scope of high-technology research and  
11 development tax preference programs after January 1, 2016.

12 (b) In developing these recommendations, the working group must  
13 reprioritize current resources devoted to high-technology research and  
14 development tax preferences to provide additional funding for higher  
15 education institutions with a focus on science, technology,  
16 engineering, and math programs of study.

17 (c) The working group must submit its proposal to the governor and  
18 fiscal committees of the legislature by December 1, 2014.

19 (3) This section expires January 1, 2015.

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