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**SENATE BILL 5244**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Brown, Dozier, Holy, Mullet, Muzzall, and Short

Read first time 01/15/21. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to encouraging the production of advanced nuclear  
2 reactors, small modular reactors, and components through the invest  
3 in Washington act; amending RCW 82.85.010, 82.85.020, 82.85.030,  
4 82.85.040, 82.85.050, 82.85.060, 82.85.070, 82.85.080, and 82.85.900;  
5 and providing expiration dates.

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

7 **Sec. 1.** RCW 82.85.010 and 2017 3rd sp.s. c 37 s 801 are each  
8 amended to read as follows:

9 (1) Businesses that invest capital create jobs and generate  
10 economic activity that supports a healthy Washington economy. The  
11 legislature finds that these investments result in future revenues  
12 that support schools and our communities. Therefore, the legislature  
13 finds that a pilot program must be conducted to evaluate the  
14 effectiveness of a program that invests business taxes from new  
15 investments into workforce training programs that support  
16 manufacturing businesses in the state of Washington thereby creating  
17 jobs and capital investments in the state for the benefit of its  
18 citizens.

19 (2)(a) This subsection is the tax preference performance  
20 statement for the sales and use tax deferral provided in RCW  
21 82.85.040 on expenditures made to build or expand qualified

1 investment projects and purchases of machinery and equipment. This  
2 performance statement is only intended to be used for subsequent  
3 evaluation of the tax preference. It is not intended to create a  
4 private right of action by any party or be used to determine  
5 eligibility for preferential tax treatment.

6 (b) The legislature categorizes the tax preference as one  
7 intended to create or retain jobs and to provide funding to support  
8 job readiness training, professional development, or apprenticeship  
9 programs in manufacturing or production occupations, as indicated in  
10 RCW 82.32.808(2) (c) and (f).

11 (c) It is the legislature's specific public policy objective to  
12 provide a pilot program that would provide a sales tax deferral on  
13 the construction and expenditure costs of ~~((up to two new  
14 manufacturing facilities per calendar year, one of which must be  
15 located in eastern Washington and one of which must be located in  
16 western Washington))~~ new, renovated, or expanded manufacturing  
17 facilities. When deferred taxes are repaid, the deferred taxes are  
18 reinvested to support job readiness training, professional  
19 development, or apprenticeship programs in manufacturing or  
20 production occupations.

21 (d) To measure the effectiveness of the deferral provided in this  
22 part in achieving the specific public policy objective described in  
23 (c) of this subsection, the joint legislative audit and review  
24 committee should refer to information available from the employment  
25 security department and department of revenue. If a review finds that  
26 each eligible investment project generated at least ~~((twenty))~~ 20  
27 full-time jobs and increased training opportunities for manufacturing  
28 and production jobs, then the legislature intends for the legislative  
29 auditor to recommend extending the expiration date of the tax  
30 preference. For purposes of this subsection (2)(d), the term full-  
31 time jobs include both temporary construction jobs and permanent  
32 full-time employment positions created at the eligible investment  
33 project within one year of the date that the facility became  
34 operationally complete as determined by the department of revenue.

35 (3) This section expires January 1, ~~((2026))~~ 2031.

36 **Sec. 2.** RCW 82.85.020 and 2017 3rd sp.s. c 37 s 802 are each  
37 amended to read as follows:

38 (1) The definitions in this section apply throughout this chapter  
39 unless the context clearly requires otherwise.

1 (a) "Advanced nuclear reactor" means a nuclear fission reactor  
2 with significant improvements over the most recent generation of  
3 nuclear fission reactors, or a reactor using nuclear fusion.

4 (b) "Applicant" means a person applying for a tax deferral under  
5 this chapter.

6 (~~(b)~~) (c) "Eligible investment project" means an investment  
7 project for qualified buildings and machinery and equipment on  
8 (~~two~~) new, renovated, or expanded manufacturing operations (~~per~~  
9 ~~calendar year, one of which must be located east of the crest of the~~  
10 ~~Cascade mountains and one of which must be located west of the crest~~  
11 ~~of the Cascade mountains~~). Eligible investment projects that produce  
12 advanced nuclear reactors, small modular reactors, or components of  
13 advanced nuclear reactors or small modular reactors are encouraged.

14 The deferral provided in this section only applies to the state and  
15 local sales and use taxes due on the first (~~ten million dollars~~)  
16 \$10,000,000 in costs for qualified buildings and machinery and  
17 equipment.

18 (~~(e)~~) (d) "Initiation of construction" has the same meaning as  
19 in RCW 82.63.010.

20 (~~(d)~~) (e) "Investment project" means an investment in qualified  
21 buildings or qualified machinery and equipment, including labor and  
22 services rendered in the planning, installation, and construction of  
23 the project.

24 (~~(e)~~) (f) "Manufacturing" has the same meaning as provided in  
25 RCW 82.04.120.

26 (~~(f)~~) (g) "Person" has the same meaning as provided in RCW  
27 82.04.030.

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

38 (~~(h)~~) (i) "Qualified machinery and equipment" means all new  
39 industrial fixtures, equipment, and support facilities that are an  
40 integral and necessary part of a manufacturing operation. "Qualified

1 machinery and equipment" includes: Computers; software; data  
2 processing equipment; laboratory equipment; manufacturing components  
3 such as belts, pulleys, shafts, and moving parts; molds, tools, and  
4 dies; operating structures; and all equipment used to control,  
5 monitor, or operate the machinery.

6 ~~((i))~~ (j) "Recipient" means a person receiving a tax deferral  
7 under this chapter.

8 (k) "Small modular reactor" means a scalable nuclear power plant  
9 using reactors that each have a gross power output no greater than  
10 350 megawatts electric, and where each reactor is designed for  
11 factory manufacturing and ease of transport, such as by truck, rail,  
12 or barge.

13 (2) This section expires January 1, ~~((2026))~~ 2031.

14 **Sec. 3.** RCW 82.85.030 and 2020 c 139 s 47 are each amended to  
15 read as follows:

16 (1) The lessor or owner of a qualified building is not eligible  
17 for a deferral unless:

18 ~~((1))~~ (a) The underlying ownership of the building, machinery,  
19 and equipment vests exclusively in the same person; or

20 ~~((2)(a))~~ (b)(i) The lessor by written contract agrees to pass  
21 the economic benefit of the deferral to the lessee;

22 ~~((b))~~ (ii) The lessee that receives the economic benefit of the  
23 deferral agrees in writing with the department to complete the annual  
24 tax performance report required under RCW 82.32.534; and

25 ~~((e))~~ (iii) The economic benefit of the deferral passed to the  
26 lessee is no less than the amount of tax deferred by the lessor and  
27 is evidenced by written documentation of any type of payment, credit,  
28 or other financial arrangement between the lessor or owner of the  
29 qualified building and the lessee.

30 (2) This section expires January 1, 2031.

31 **Sec. 4.** RCW 82.85.040 and 2017 3rd sp.s. c 37 s 803 are each  
32 amended to read as follows:

33 (1) Application for deferral of taxes under this chapter must be  
34 made before initiation of the construction of the investment project  
35 or acquisition of equipment or machinery. The application must be  
36 made to the department in a form and manner prescribed by the  
37 department. The deferrals are available on a first-in-time basis. The  
38 application must contain information regarding the location of the

1 investment project, the applicant's average employment in the state  
2 for the prior year, estimated or actual new employment related to the  
3 project, estimated or actual wages of employees related to the  
4 project, estimated or actual costs, time schedules for completion and  
5 operation, and other information required by the department. The  
6 department must rule on the application within (~~sixty~~) 60 days.

7 (2) The department may not approve applications for more than two  
8 eligible investment projects per calendar year.

9 (3) This section expires January 1, (~~2026~~) 2031.

10 **Sec. 5.** RCW 82.85.050 and 2015 3rd sp.s. c 6 s 405 are each  
11 amended to read as follows:

12 (1) Except as otherwise provided in subsection (2) of this  
13 section, the department must issue a sales and use tax deferral  
14 certificate for state and local sales and use taxes due under  
15 chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible  
16 investment project.

17 (2) No certificate may be issued for an investment project that  
18 has already received a deferral under this (~~part [chapter]~~) chapter  
19 or chapter 82.60 RCW.

20 (3) The department must keep a running total of all deferrals  
21 granted under this chapter during each fiscal biennium.

22 (4) This section expires January 1, 2031.

23 **Sec. 6.** RCW 82.85.060 and 2015 3rd sp.s. c 6 s 406 are each  
24 amended to read as follows:

25 (1) The recipient must begin paying the deferred taxes in the  
26 fifth year after the date certified by the department as the date on  
27 which the investment project has been operationally completed. The  
28 first payment of (~~ten~~) 10 percent of the deferred taxes will be due  
29 on December 31st of the fifth calendar year after such certified  
30 date, with subsequent annual payments of (~~ten~~) 10 percent of the  
31 deferred taxes due on December 31st for each of the following nine  
32 years.

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

35 (3) Interest may not be charged on any taxes deferred under this  
36 chapter for the period of deferral, although all other penalties and  
37 interest applicable to delinquent excise taxes may be assessed and  
38 imposed for delinquent payments under this chapter. The debt for

1 deferred taxes will not be extinguished by insolvency or other  
2 failure of the recipient. Transfer of ownership does not terminate  
3 the deferral. The deferral is transferred, subject to the successor  
4 meeting the eligibility requirements of this chapter, for the  
5 remaining periods of the deferral.

6 (4) This section expires January 1, 2031.

7 **Sec. 7.** RCW 82.85.070 and 2015 3rd sp.s. c 6 s 407 are each  
8 amended to read as follows:

9 (1) State taxes deferred and repaid under this chapter, including  
10 any interest or penalties on such amounts, must be deposited in the  
11 invest in Washington account created in this section. The invest in  
12 Washington account is hereby created in the state treasury (~~((and))~~)  
13 and must be used exclusively by the state board for community and  
14 technical colleges for supporting customized training programs, job  
15 skills programs, job readiness training, workforce professional  
16 development, and to assist employers with state-approved  
17 apprenticeship programs for manufacturing and production occupations.

18 (2) Revenues to the invest in Washington account consist of  
19 amounts transferred by the state treasurer as provided in subsection  
20 (3) of this section.

21 (3) By June 1, 2016, and by June 1st of every subsequent year,  
22 the department must notify the state treasurer of the amount of tax,  
23 interest, and penalties collected under this section since September  
24 1, 2015, through May 1, 2016, in the case of the first notification  
25 under this subsection (3), and since the previous May 1st for  
26 subsequent notifications under this subsection (3). The department  
27 may make adjustments to the annual notification under this subsection  
28 (3) as may be necessary to correct errors in the previous  
29 notification or offset previous amounts that did not qualify for  
30 deferral under this section.

31 (4) By July 1, 2016, and by July 1st of every subsequent year,  
32 the state treasurer must transfer the amount included in the  
33 department's most recent notification under subsection (3) of this  
34 section from the general fund to the invest in Washington  
35 account. Money in the account may only be appropriated for the  
36 purposes specified in subsection (1) of this section.

37 (5) This section expires January 1, 2031.

1       **Sec. 8.** RCW 82.85.080 and 2020 c 139 s 48 are each amended to  
2 read as follows:

3       (1) Each recipient of a deferral of taxes granted under this  
4 chapter must file a complete annual tax performance report with the  
5 department under RCW 82.32.534. If the economic benefits of the  
6 deferral are passed to a lessee as provided in RCW 82.85.030, the  
7 lessee must file a complete annual tax performance report, and the  
8 applicant is not required to file a complete annual tax performance  
9 report.

10       (2) If, on the basis of a tax performance report under RCW  
11 82.32.534 or other information, the department finds that an  
12 investment project is not eligible for tax deferral under this  
13 chapter due to the fact the investment project is no longer used for  
14 qualified activities, the amount of deferred taxes outstanding for  
15 the investment project is immediately due and payable.

16       (3) If the economic benefits of a tax deferral under this chapter  
17 are passed to a lessee as provided in RCW 82.85.030, the lessee is  
18 responsible for payment to the extent the lessee has received the  
19 economic benefit.

20       (4) This section expires January 1, 2031.

21       **Sec. 9.** RCW 82.85.900 and 2015 3rd sp.s. c 6 s 409 are each  
22 amended to read as follows:

23       (1) This ((part [chapter])) chapter may be known and cited as the  
24 invest in Washington act.

25       (2) This section expires January 1, 2031.

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