

SHB 2546 - H AMD

By Representative Roach

1 Strike everything after the enacting clause and insert:

2 "NEW SECTION. **Sec. 1.** The legislature finds that recruiting
3 and retaining high technology companies is a critical component of
4 creating a strong economy for Washington's future. This strong
5 economy is vital to provide the public and private resources to
6 support a diverse array of essential government and social
7 services. The legislature also finds that numerous states and
8 countries are using an extensive series of economic incentives to
9 compete for these same high technology companies and the high-wage
10 direct and indirect jobs they create.

11 The legislature also finds that high technology companies of
12 all sizes must continue to invest in research and development to
13 discover new ideas that lead to new products and processes that
14 significantly improve the quality of life of all citizens of
15 Washington state. The legislature finds that the business and
16 occupations tax credit is intended to promote investment in initial
17 research and development by high technology companies to explore
18 new ideas. The legislature further finds that the sales tax
19 deferral and exemption is intended to promote investment in the
20 capital facilities that house the people and equipment necessary to
21 further evaluation of these new ideas.

22 The legislature finds that the business and occupation tax
23 credit for investment in research and development and a sales tax
24 deferral and exemption for investment in capital facilities to
25 conduct research and development are designed to work together to
26 encourage new ideas and transform them into products and processes.
27 Therefore, the legislature directs that these incentives shall be
28 evaluated together to determine their joint ability to create
29 direct, indirect, and induced economic benefits for the people of
30 the state of Washington.

1 **Sec. 2.** RCW 82.04.4452 and 2000 c 103 s 7 are each amended to
2 read as follows:

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

7 (2) The credit is equal to the greater of the amount of
8 qualified research and development expenditures of a person or
9 eighty percent of amounts received by a person other than a public
10 educational or research institution in compensation for the conduct
11 of qualified research and development, multiplied by the rate
12 provided in RCW 82.04.260(3) in the case of a nonprofit corporation
13 or nonprofit association engaging within this state in research and
14 development, and the rate provided in RCW 82.04.290(2) for every
15 other person.

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

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

29 (5) Any person taking the credit, including any credit assigned
30 to a person under subsection (3) of this section, whose research
31 and development spending during the calendar year in which the
32 credit is claimed fails to exceed 0.92 percent of the person's
33 taxable amount during the same calendar year shall be liable for
34 payment of the additional taxes represented by the amount of credit
35 taken together with interest, but not penalties. Interest shall be
36 due at the rate provided for delinquent excise taxes retroactively
37 to the date the credit was taken until the taxes are paid. Any
38 credit assigned to a person under subsection (3) of this section
39 that is disallowed as a result of this section may be taken by the

1 person who performed the qualified research and development subject
2 to the limitations set forth in subsection (4) of this section.

3 (6) Any person claiming the credit, and any person assigning a
4 credit as provided in subsection (3) of this section, shall file an
5 affidavit form prescribed by the department which shall include the
6 amount of the credit claimed, ~~((an estimate of))~~ the
7 ~~((anticipated))~~ qualified research and development expenditures
8 during the calendar year for which the credit is claimed, ~~((an~~
9 ~~estimate of))~~ and the taxable amount during the calendar year for
10 which the credit is claimed, and such additional information as the
11 department may prescribe. The report is due by March 31st
12 following any year a credit is taken.

13 (7)(a) A person claiming the credit shall agree to supply the
14 department with information ~~((necessary to measure the results of~~
15 ~~the tax credit program for qualified research and development~~
16 ~~expenditures))~~ on research and development spending, and product
17 development, which may be measured by a proxy such as research
18 projects, copyrights, trademarks, or patents issued. The survey
19 information is deemed tax information under RCW 82.32.330.

20 (b) If a person fails to provide the information required under
21 this subsection by the due date, the person entitled to the credit
22 provided in subsection (2) of this section is not eligible to take
23 or assign the credit provided in subsection (2) of this section in
24 the year the person failed to complete the survey.

25 (8) The ~~((department))~~ joint legislative audit and review
26 committee shall use the information ~~((required under))~~ from
27 subsection (7) of this section and from other state agency sources
28 to ~~((perform three assessments on))~~ study the tax credit program
29 authorized under this section. ~~((The assessments will take place~~
30 in 1997, 2000, and 2003. The department shall prepare reports on
31 each assessment and deliver their reports by September 1, 1997,
32 September 1, 2000, and September 1, 2003. The assessments)) The
33 committee shall report to the legislature by December 1, 2013. The
34 study shall measure the effect of the program on ~~((job creation,~~
35 the number of jobs created for Washington residents,)) company
36 growth, the introduction of new products as measured by copyrights,
37 trademarks, and overall patent issuance, the diversification of the
38 state's economy, growth in research and development investment, and
39 the movement of firms or the consolidation of firms' operations

1 into the state(~~(, and such other factors as the department~~
2 ~~selects)~~). In conducting this evaluation, the committee shall:

3 (a) Use a generally accepted econometric model and contract
4 with outside experts; and

5 (b) Evaluate the direct, indirect, and induced impacts of this
6 program together with the program authorized under RCW 82.63.020.

7 (9) For the purpose of this section:

8 (a) "Qualified research and development expenditures" means
9 operating expenses, including wages, compensation of a proprietor
10 or a partner in a partnership as determined under rules adopted by
11 the department, benefits, supplies, and computer expenses, directly
12 incurred in qualified research and development by a person claiming
13 the credit provided in this section. The term does not include
14 amounts paid to a person other than a public educational or
15 research institution to conduct qualified research and development.
16 Nor does the term include capital costs and overhead, such as
17 expenses for land, structures, or depreciable property.

18 (b) "Qualified research and development" shall have the same
19 meaning as in RCW 82.63.010.

20 (c) "Research and development spending" means qualified
21 research and development expenditures plus eighty percent of
22 amounts paid to a person other than a public educational or
23 research institution to conduct qualified research and development.

24 (d) "Taxable amount" means the taxable amount subject to the
25 tax imposed in this chapter required to be reported on the person's
26 combined excise tax returns during the year in which the credit is
27 claimed, less any taxable amount for which a credit is allowed
28 under RCW 82.04.440.

29 (10) This section expires (~~December 31, 2004~~) January 1,
30 2015.

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

33 Unless the context clearly requires otherwise, the definitions
34 in this section apply throughout this chapter.

35 (1) "Advanced computing" means technologies used in the
36 designing and developing of computing hardware and software,
37 including innovations in designing the full spectrum of hardware

1 from hand-held calculators to super computers, and peripheral
2 equipment.

3 (2) "Advanced materials" means materials with engineered
4 properties created through the development of specialized
5 processing and synthesis technology, including ceramics, high
6 value-added metals, electronic materials, composites, polymers, and
7 biomaterials.

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

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

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

20 (6) "Electronic device technology" means technologies involving
21 microelectronics; semiconductors; electronic equipment and
22 instrumentation; radio frequency, microwave, and millimeter
23 electronics; optical and optic-electrical devices; and data and
24 digital communications and imaging devices.

25 (7) "Eligible investment project" means an investment project
26 which either initiates a new operation, or expands or diversifies
27 a current operation by expanding, renovating, or equipping an
28 existing facility. The lessor or owner of the qualified building
29 is not eligible for a deferral unless (a) the underlying ownership
30 of the buildings, machinery, and equipment vests exclusively in the
31 same person(~~(, or unless))~~); or (b)(i) the lessor by written
32 contract agrees to pass the economic benefit of the deferral to the
33 lessee in the form of reduced rent payments, and (ii) the lessee
34 that receives the economic benefit of the deferral agrees in
35 writing with the department to complete the annual survey required
36 under RCW 82.63.020(2). The economic benefit of the deferral to
37 the lessee may be evidenced by any type of payment, credit, or any
38 other financial arrangement between the lessor or owner of the
39 qualified building and the lessee.

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

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

9 (10) "Person" has the meaning given in RCW 82.04.030 and
10 includes state universities as defined in RCW 28B.10.016.

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

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

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

1 fermenters; operating structures; and all other equipment used to
2 control, monitor, or operate the machinery. For purposes of this
3 chapter, qualified machinery and equipment must be either new to
4 the taxing jurisdiction of the state or new to the certificate
5 holder, except that used machinery and equipment may be treated as
6 qualified machinery and equipment if the certificate holder either
7 brings the machinery and equipment into Washington or makes a
8 retail purchase of the machinery and equipment in Washington or
9 elsewhere.

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

14 (15) "Recipient" means a person receiving the economic benefit
15 of a tax deferral under this chapter. If the economic benefit of
16 the tax deferral is passed to a lessee as provided under subsection
17 (7) of this section, then the lessee shall be the recipient.

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

33 (17) "Initiation of construction" means the date that a
34 building permit is issued for (a) the construction of the qualified
35 building, in the event the underlying ownership of the building
36 vests exclusively with the person receiving the economic benefit of
37 the deferral, or (b) tenant improvements for a qualified building,
38 in the event the economic benefits of the deferral are passed
39 through to a lessee as provided in subsection (7) of this section.

1 The initiation of construction does not include soil testing, site
2 clearing and grading, site preparation, or any other related
3 activities that are initiated prior to the issuance of a building
4 permit for the construction of the foundation of the building. If
5 the investment project is a phased project, the term initiation of
6 construction shall apply separately to each phase.

7 **Sec. 4.** RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended
8 to read as follows:

9 (1) Application for deferral of taxes under this chapter must
10 be made before initiation of construction of, or acquisition of
11 equipment or machinery for the investment project. The application
12 shall be made to the department in a form and manner prescribed by
13 the department. The application shall contain information
14 regarding the location of the investment project, the applicant's
15 average employment in the state for the prior year, estimated or
16 actual new employment related to the project, estimated or actual
17 wages of employees related to the project, estimated or actual
18 costs, time schedules for completion and operation, and other
19 information required by the department. The department shall rule
20 on the application within sixty days.

21 (2) Applicants for deferral of taxes under this chapter shall
22 agree to ~~((supply))~~ complete an annual survey, supplying the
23 department with nonproprietary information necessary to measure the
24 results of the tax deferral program for high-technology research
25 and development and pilot scale manufacturing facilities. The
26 survey may include questions pertaining to job creation, job
27 retention, the number of full-time equivalent positions created,
28 overall industry wage levels, company growth, introduction of new
29 products, growth in research and development investment, and
30 movement of firms or the consolidation of firms' operations into
31 the state. The information is due by March 31st the year following
32 the calendar year in which the applicant applied for the deferral
33 and for the eight years after the investment project is certified
34 by the department as having been operationally complete. The
35 survey information is deemed tax information under RCW 82.32.330.

36 (3) The ~~((department))~~ joint legislative audit and review
37 committee shall use the information and information available from
38 state agency sources to ~~((perform three assessments on))~~ study the

1 tax deferral program authorized under this chapter. ((The
2 assessments will take place in 1997, 2000, and 2003.)) The
3 ((department)) committee shall ((prepare reports on each assessment
4 and deliver their reports by September 1, 1997, September 1, 2000,
5 and September 1, 2003)) report to the legislature by December 1,
6 2013. The ((assessments)) report shall measure the effect of the
7 program on job creation, the number of jobs created ((for
8 Washington residents)), company growth, the introduction of new
9 products as measured by trademarks, copyrights, or overall patent
10 issuance, the diversification of the state's economy, growth in
11 research and development investment, and the movement of firms or
12 the consolidation of firms' operations into the state((, and such
13 other factors as the department selects)). In conducting this
14 evaluation, the committee shall:

15 (a) Use a generally accepted econometric model and contract
16 with outside experts; and

17 (b) Evaluate the direct, indirect, and induced impacts of this
18 program together with the program authorized under RCW 82.63.020.

19 **Sec. 5.** RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended
20 to read as follows:

21 (1) Except as provided in subsection (2) of this section, the
22 department shall issue a sales and use tax deferral certificate for
23 state and local sales and use taxes due under chapters 82.08,
24 82.12, and 82.14 RCW on each eligible investment project.

25 (2) No certificate may be issued for an investment project that
26 has already received a deferral under chapter 82.60 or 82.61 RCW or
27 this chapter, except that an investment project for qualified
28 research and development that has already received a deferral may
29 also receive an additional deferral certificate for adapting the
30 investment project for use in pilot scale manufacturing.

31 (3) This section shall expire ((July)) January 1, ((2004))
32 2015.

33 **Sec. 6.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to
34 read as follows:

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

1 (2)(a) If, on the basis of ((a report)) survey under RCW
2 82.63.020 or other information, the department finds that an
3 investment project is used for purposes other than qualified
4 research and development or pilot scale manufacturing at any time
5 during the calendar year in which the investment project is
6 certified by the department as having been operationally completed,
7 or at any time during any of the seven succeeding calendar years,
8 a portion of deferred taxes shall be immediately due according to
9 the following schedule:

10	Year in which use occurs	% of deferred taxes due
11	1	100%
12	2	87.5%
13	3	75%
14	4	62.5%
15	5	50%
16	6	37.5%
17	7	25%
18	8	12.5%

19 (b) If a recipient of the deferral fails to file the annual
20 survey required under RCW 82.63.020 by the date due, 12.5 percent
21 of the deferred tax shall be immediately due from the recipient.

22 (c) If an investment project is used for purposes other than
23 qualified research and development or pilot scale manufacturing at
24 any time during the calendar year in which the investment project
25 is certified as having been operationally complete or the recipient
26 of the deferral fails to complete the annual survey due under RCW
27 82.63.020, the portion of deferred taxes immediately due is the
28 amount on the schedule in (a) of this subsection.

29 (3) The department shall assess interest at the rate provided
30 for delinquent taxes, but not penalties, retroactively to the date
31 of deferral. The debt for deferred taxes will not be extinguished
32 by insolvency or other failure of the recipient. Transfer of
33 ownership does not terminate the deferral. The deferral is
34 transferred, subject to the successor meeting the eligibility

1 requirements of this chapter, for the remaining periods of the
2 deferral.

3 ~~((+3))~~ (4) Notwithstanding subsection (2) of this section,
4 deferred taxes on the following need not be repaid:

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

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

10 **Sec. 7.** RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended
11 to read as follows:

12 Applications ~~((and other information))~~ received by the
13 department under this chapter are not confidential and are subject
14 to disclosure.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.04
16 RCW to read as follows:

17 This chapter does not apply to amounts received by any person
18 for research and development under the federal small business
19 innovation research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et
20 seq.).

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04
22 RCW to read as follows:

23 This chapter does not apply to amounts received by any person
24 for research and development under the federal small business
25 technology transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et
26 seq.).

27 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
28 July 1, 2004."

EFFECT: The B&O tax credit is extended ten years to January 1,
2015. The sales and use tax deferral program is extended ten
years to January 1, 2015. A person claiming the credit must
supply the Department of Revenue with information on research
and development spending, and product development. Applicants
for deferral must complete an annual survey, supplying the
department with nonproprietary information necessary to measure
the results of the tax deferral program. The Joint Legislative
Audit and Review Committee uses the information and information

from other state agency sources to study the tax credit and deferral programs and report to the Legislature by December 1, 2013. The B&O tax does not apply to amounts received by a small business for research and development under the federal small business innovation research program or the federal small business technology transfer program.