

**ESHB 3014 - S AMD 458**

By Senators Kastama, Zarelli

ADOPTED 03/25/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 82.60.010 and 1985 c 232 s 1 are each amended to read  
4 as follows:

5 The legislature finds that there are several areas in the state  
6 that are characterized by very high levels of unemployment and poverty.  
7 The (~~legislative~~[legislature]) legislature further finds that  
8 economic stagnation is the primary cause of this high unemployment rate  
9 and poverty; that new state policies are necessary in order to promote  
10 economic stimulation and new employment opportunities in these  
11 distressed areas; and that policies providing incentives for economic  
12 growth in these distressed areas are essential. For these reasons, the  
13 legislature (~~hereby~~) reestablishes a tax deferral program to be  
14 effective solely in distressed (~~areas and under circumstances where~~  
15 ~~the deferred tax payments are for investments or costs that result in~~  
16 ~~the creation of a specified number of jobs~~) counties. The legislature  
17 declares that this limited program serves the vital public purpose of  
18 creating employment opportunities and reducing poverty in the  
19 distressed (~~areas~~) counties of the state.

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

22 Unless the context clearly requires otherwise, the definitions in  
23 this section apply throughout this chapter.

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

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

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

28 (a) Through June 30, 2010, a rural county as defined in RCW  
29 82.14.370; and

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

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

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

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

10 ~~(ii)(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 ~~(e))~~ "Eligible investment project" does not include any portion of  
21 an investment project undertaken by a light and power business as  
22 defined in RCW 82.16.010(4), other than that portion of a cogeneration  
23 project that is used to generate power for consumption within the  
24 manufacturing site of which the cogeneration project is an integral  
25 part, or investment projects ~~((which))~~ that have already received  
26 deferrals under this chapter.

27 (5) "Initiation of construction" has the same meaning as in RCW  
28 82.63.010.

29 (6) "Investment project" means an investment in qualified buildings  
30 or qualified machinery and equipment, including labor and services  
31 rendered in the planning, installation, and construction of the  
32 project.

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

35 (a) Before July 1, 2010: (i) Computer programming, the production  
36 of computer software, and other computer-related services, but only  
37 when the computer programming, production of computer software, or  
38 other computer-related services are performed by a manufacturer as

1 defined in RCW 82.04.110 and contribute to the production of a new,  
2 different, or useful substance or article of tangible personal property  
3 for sale; (ii) the activities performed by research and development  
4 laboratories and commercial testing laboratories((7)); and (iii) the  
5 conditioning of vegetable seeds; and

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

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

10 (9) "Qualified buildings" means construction of new structures, and  
11 expansion or renovation of existing structures for the purpose of  
12 increasing floor space or production capacity used for manufacturing  
13 ((and)) or research and development activities, including plant offices  
14 and warehouses or other facilities for the storage of raw material or  
15 finished goods if such facilities are an essential or an integral part  
16 of a factory, mill, plant, or laboratory used for manufacturing or  
17 research and development. If a building is used partly for  
18 manufacturing or research and development and partly for other  
19 purposes, the applicable tax deferral ((shall)) must be determined by  
20 apportionment of the costs of construction under rules adopted by the  
21 department.

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

28 (11) "Qualified machinery and equipment" means all new industrial  
29 and research fixtures, equipment, and support facilities that are an  
30 integral and necessary part of a manufacturing or research and  
31 development operation. "Qualified machinery and equipment" includes:  
32 Computers; software; data processing equipment; laboratory equipment;  
33 manufacturing components such as belts, pulleys, shafts, and moving  
34 parts; molds, tools, and dies; operating structures; and all equipment  
35 used to control or operate the machinery.

36 (12) "Qualifying county" means a county that has an unemployment  
37 rate, as determined by the employment security department, which is at  
38 least twenty percent above the state average for the three calendar

1 years immediately preceding the year in which the list of qualifying  
2 counties is established or updated, as the case may be, as provided in  
3 section 3 of this act.

4 (13) "Recipient" means a person receiving a tax deferral under this  
5 chapter.

6 ~~((+13+))~~ (14) "Research and development" means the development,  
7 refinement, testing, marketing, and commercialization of a product,  
8 service, or process before commercial sales have begun, but only when  
9 such activities are intended to ultimately result in the production of  
10 a 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 NEW SECTION. Sec. 3. A new section is added to chapter 82.60 RCW  
16 to read as follows:

17 The department, with the assistance of the employment security  
18 department, must establish a list of qualifying counties effective July  
19 1, 2010. The list of qualifying counties is effective for a twenty-  
20 four month period and must be updated by July 1st of the year that is  
21 two calendar years after the list was established or last updated, as  
22 the case may be.

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

25 The lessor or owner of a qualified building is not eligible for a  
26 deferral unless:

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

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

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

34 (c) The economic benefit of the deferral passed to the lessee is no  
35 less than the amount of tax deferred by the lessor and is evidenced by

1 written documentation of any type of payment, credit, or other  
2 financial arrangement between the lessor or owner of the qualified  
3 building and the lessee.

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

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

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

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

21 (1) The department (~~shall~~) must issue a sales and use tax  
22 deferral certificate for state and local sales and use taxes due under  
23 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment  
24 project (~~that is located in an eligible area as defined in RCW~~  
25 ~~82.60.020~~)).

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

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

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

31 (1) For the purposes of this section:

32 (a) "Eligible area" also means a designated community empowerment  
33 zone approved under RCW 43.31C.020 (~~or a county containing a community~~  
34 ~~empowerment zone~~)).

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

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

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

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

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

21 (4) The qualified employment position must be filled by the end of  
22 the calendar year following the year in which the project is certified  
23 as operationally complete. If a person does not meet the requirements  
24 for qualified employment positions by the end of the second calendar  
25 year following the year in which the project is certified as  
26 operationally complete, all deferred taxes are immediately due.

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

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

|   | Repayment Year | % of Deferred Tax Repaid |
|---|----------------|--------------------------|
| 1 |                |                          |
| 2 | 1              | 10%                      |
| 3 | 2              | 15%                      |
| 4 | 3              | 20%                      |
| 5 | 4              | 25%                      |
| 6 | 5              | 30%                      |

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

9 (3) Interest (~~(shall)~~) may not be charged on any taxes deferred  
10 under this chapter for the period of deferral, although all other  
11 penalties and interest applicable to delinquent excise taxes may be  
12 assessed and imposed for delinquent payments under this chapter. The  
13 debt for deferred taxes will not be extinguished by insolvency or other  
14 failure of the recipient. Transfer of ownership does not terminate the  
15 deferral. The deferral is transferred, subject to the successor  
16 meeting the eligibility requirements of this chapter, for the remaining  
17 periods of the deferral.

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

20 (1)(a) Each recipient of a deferral of taxes granted under this  
21 chapter must file a complete annual survey with the department under  
22 RCW 82.32. . . (section 102, chapter . . . (SHB 3066), Laws of 2010).  
23 If the economic benefits of the deferral are passed to a lessee as  
24 provided in (~~(RCW 82.60.020(4))~~) section 4 of this act, the lessee must  
25 file a complete annual survey, and the applicant is not required to  
26 file a complete annual survey.

27 (b) The department must use the information reported on the annual  
28 survey required by this section to study the tax deferral program  
29 authorized under this chapter. The department must report to the  
30 legislature by December 1, (~~(2009)~~) 2019. The report must measure the  
31 effect of the program on job creation, the number of jobs created for  
32 residents of eligible areas, company growth, the introduction of new  
33 products, the diversification of the state's economy, growth in

1 research and development investment, the movement of firms or the  
2 consolidation of firms' operations into the state, and such other  
3 factors as the department selects.

4 (2) Except as provided in section 10 of this act, if, on the basis  
5 of a survey under ((section)) RCW 82.32. . . (section 102, chapter . .  
6 . (SHB 3066), Laws of 2010) or other information, the department finds  
7 that an investment project is not eligible for tax deferral under this  
8 chapter, the amount of deferred taxes outstanding for the project  
9 ((is)), according to the repayment schedule in RCW 82.60.060, is  
10 immediately due. For purposes of this subsection (2)(a), the repayment  
11 schedule in RCW 82.60.060 is tolled during the period of time that a  
12 taxpayer is receiving relief from repayment of deferred taxes under  
13 section 10 of this act.

14 (3) A recipient who must repay deferred taxes under subsection (2)  
15 of this section because the department has found that an investment  
16 project is not eligible for tax deferral under this chapter is no  
17 longer required to file annual surveys under RCW 82.32. . . (section  
18 102, chapter . . . (SHB 3066), Laws of 2010) beginning on the date an  
19 investment project is used for nonqualifying purposes.

20 (4) Notwithstanding any other provision of this section or RCW  
21 82.32. . . (section 102, chapter . . . (SHB 3066), Laws of 2010),  
22 deferred taxes 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. 10. A new section is added to chapter 82.60 RCW  
29 to read as follows:

30 (1) Subject to the conditions in this section, a person is not  
31 liable for the amount of deferred taxes outstanding for an investment  
32 project when the person temporarily ceases to use its qualified  
33 buildings and qualified machinery and equipment for manufacturing or  
34 research and development activities in a county with a population of  
35 less than twenty thousand persons for a period not to exceed twenty-  
36 four months from the date that the department sent its assessment for  
37 the amount of outstanding deferred taxes to the taxpayer.





1 file an annual survey as required under RCW 82.60.070(1) or any  
2 successor statute. In addition, the person must file, in a form and  
3 manner prescribed by the department, a report on the status of the  
4 business and the outlook for commencing manufacturing or research and  
5 development activities.

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

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

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

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

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

15 (4)(a) "Eligible business project" means manufacturing or research  
16 and development activities which are conducted by an applicant in an  
17 eligible area at a specific facility, provided the applicant's average  
18 qualified employment positions at the specific facility will be at  
19 least fifteen percent greater in the four consecutive full calendar  
20 quarters after the calendar quarter during which the first qualified  
21 employment position is filled than the applicant's average qualified  
22 employment positions at the same facility in the four consecutive full  
23 calendar quarters immediately preceding the calendar quarter during  
24 which the first qualified employment position is filled.

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

29 (5) "First qualified employment position" means the first qualified  
30 employment position filled for which a credit under this chapter is  
31 sought.

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

34 (a) Before July 1, 2010: (i) Computer programming, the production  
35 of computer software, and other computer-related services, but only  
36 when the computer programming, production of computer software, or  
37 other computer-related services are performed by a manufacturer as

1 defined in RCW 82.04.110 and contribute to the production of a new,  
2 different, or useful substance or article of tangible personal property  
3 for sale; and (ii) the activities performed by research and development  
4 laboratories and commercial testing laboratories; and

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

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

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

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

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

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

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

21 (ii) During a vacancy, the employer is training or actively  
22 recruiting a replacement permanent, full-time employee for the  
23 position.

24 (9) "Recipient" means a person receiving tax credits under this  
25 chapter.

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

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

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

3 NEW SECTION. **Sec. 12.** RCW 82.60.900 and 82.60.901 are each  
4 decodified.

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

7 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and  
8 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s  
9 5, & 1985 c 232 s 10; and

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

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

14 NEW SECTION. **Sec. 15.** The amendments to the definitions of  
15 "manufacturing" and "research and development" in sections 2 and 11 of  
16 this act apply retroactively as well as prospectively."

**ESHB 3014** - S AMD

By Senators Kastama, Zarelli

**ADOPTED 03/25/2010**

17 On page 1, line 2 of the title, after "counties;" strike the  
18 remainder of the title and insert "amending RCW 82.60.010, 82.60.020,  
19 82.60.030, 82.60.040, 82.60.049, 82.60.060, 82.60.070, and 82.62.010;  
20 adding new sections to chapter 82.60 RCW; decodifying RCW 82.60.900 and  
21 82.60.901; repealing RCW 82.60.050 and 82.60.110; providing an  
22 effective date; and providing expiration dates."

EFFECT: Clarifies that the amendments to the definitions of

"manufacturing" and "research and development" apply both retroactively and prospectively.

--- END ---