

SSB 6789 - S AMD 422

By Senator Rockefeller

NOT ADOPTED 3/16/2010

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2           "NEW SECTION. Sec. 1. (1) It is the legislature's intent  
3 to encourage immediate investments in technology facilities that can  
4 provide an economic stimulus, sustain long-term jobs that provide  
5 living wages, and help build the digital infrastructure that can  
6 enable the state to be competitive for additional technology  
7 investment and jobs.

8           (2) There is currently an intense competition for data center  
9 construction and operation in many states including: Oregon, Arizona,  
10 North and South Carolina, North Dakota, Iowa, Virginia, Texas, Utah,  
11 and Illinois. Unprecedented incentives are available as a result of  
12 the desire of these states to attract investments that will serve as a  
13 catalyst for additional clusters of economic activity.

14           (3) Since the economic downturn, Washington has not succeeded in  
15 attracting any private investments in these centers after siting six  
16 major data centers between 2004 and 2007.

17           (4) Data center technology has advanced rapidly, with marked  
18 increases in energy efficiency. Large, commercial-grade data centers  
19 leverage the economies of scale to reduce energy consumption.  
20 Combining digitized processes with the economies of scale recognized  
21 at these data centers, today's enterprises can materially reduce the  
22 energy they consume and greatly improve their efficiency.

23           (5) The legislature finds that a twenty-seven month window that  
24 offers an opportunity to seek a tax deferral on server and related  
25 electrical equipment and installation will act as a stimulus to incent  
26 immediate investment. This investment will bring jobs, tax revenues,  
27

1 and economic growth to some of our states rural areas and counties  
2 that have unemployment above the statewide average.

3  
4 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW  
5 to read as follows:

6 (1) A qualifying business may apply for deferral of taxes of  
7 eligible server equipment to be installed, without intervening use, in  
8 an eligible computer data center, and to charges made for labor and  
9 services rendered in respect to installing eligible server equipment.  
10 The deferral of taxes also applies to sales to qualifying businesses  
11 of eligible power infrastructure, including labor and services  
12 rendered in respect to constructing, installing, repairing, altering,  
13 or improving eligible power infrastructure. The application shall  
14 contain information regarding the location of the project, estimated  
15 or actual costs of the project, time schedules for completion and  
16 operation of the project, and other information required by the  
17 department. The department shall rule on the application within sixty  
18 days. All applications for deferral under this section must be  
19 received no later than July 1, 2012.

20 (2) The department shall issue a sales and use tax deferral  
21 certificate for state and local sales and use taxes due under chapters  
22 82.08, 82.12, and 82.14 RCW.

23 (3) A qualifying business claiming the deferral under this section  
24 must present the seller with a deferral certificate in a form and  
25 manner prescribed by the department. The seller must retain a copy of  
26 the certificate for the seller's files.

27 (4) A qualifying business shall begin paying the deferred taxes in  
28 the fifth year after the date certified by the department as the date  
29 on which the eligible project is operationally complete. The first  
30 payment is due on December 31st of the fifth calendar year after such  
31 certified date, with subsequent annual payments due on December 31st  
32 of the following nine years. Each payment shall equal ten percent of  
33 the deferred tax.

1 (5) Except as provided in subsection (6) of this section, interest  
2 shall not be charged on any taxes deferred under this section for the  
3 period of deferral. The debt for deferred taxes is not extinguished  
4 by insolvency or other failure of the qualifying business.

5 (6) If the project is not operationally complete within five  
6 calendar years from issuance of the tax deferral or if at any time the  
7 department finds that the project is not eligible for tax deferral  
8 under this section, the amount of deferred taxes outstanding for the  
9 project shall be immediately due and payable. If deferred taxes must  
10 be repaid under this subsection, the department shall assess interest,  
11 but not penalties, on amounts due under this subsection. Interest  
12 shall be assessed at the rate provided for delinquent taxes under this  
13 chapter, retroactively to the date of deferral, and shall accrue until  
14 the deferred taxes are repaid.

15 (7) A qualifying business claiming a deferral under this section  
16 must complete an annual report with the department as required under  
17 section 103, chapter . . . , Laws of 2010 (Substitute House Bill No.  
18 3066).

19 (8)(a) The deferral provided in this section does not apply to:

20 (i) Any person who has received the benefit of the deferral  
21 program under chapter 82.60 RCW on: (A) The construction, renovation,  
22 or expansion of a structure or structures used as a computer data  
23 center; or (B) machinery or equipment used in a computer data center;  
24 and

25 (ii) Any person affiliated with a person within the scope of  
26 (a)(i) of this subsection (8). For purposes of this subsection,  
27 "affiliated" means that one person has a direct or indirect ownership  
28 interest of at least twenty percent in another person.

29 (b) If a person claims a deferral under this section and  
30 subsequently receives the benefit of the deferral program under  
31 chapter 82.60 RCW on either the construction, renovation, or expansion  
32 of a structure or structures used as a computer data center or  
33 machinery or equipment used in a computer data center, the person must  
34 repay the amount of taxes deferred under this section. Interest as

1 provided in chapter 82.32 RCW applies to amounts due under this  
2 section until paid in full.

3 (9) For purposes of this section the following definitions apply  
4 unless the context clearly requires otherwise:

5 (a)(i) "Computer data center" means a facility comprised of one or  
6 more buildings, which may be comprised of multiple businesses,  
7 constructed or refurbished specifically, and used primarily, to house  
8 working servers, where the facility has the following characteristics:

9 (A) Uninterruptible power supplies, generator backup power, or both;  
10 (B) sophisticated fire suppression and prevention systems; and (C)  
11 enhanced physical security, such as: Restricted access to the  
12 facility to selected personnel; permanent security guards; video  
13 camera surveillance; an electronic system requiring passcodes,  
14 keycards, or biometric scans, such as hand scans and retinal or  
15 fingerprint recognition; or similar security features.

16 (ii) For a computer data center comprised of multiple buildings,  
17 each separate building constructed or refurbished specifically, and  
18 used primarily, to house working servers is considered a computer data  
19 center if it has all of the characteristics listed in (a)(i)(A)  
20 through (C) of this subsection (9).

21 (iii) A facility comprised of one building or more than one  
22 building must have a combined square footage of at least one hundred  
23 thousand square feet.

24 (b) "Electronic data storage and data management services"  
25 include, but are not limited to: Providing data storage and backup  
26 services, providing computer processing power, hosting enterprise  
27 software applications, and hosting web sites. The term also includes  
28 providing services such as e-mail, web browsing and searching, media  
29 applications, and other online services, regardless of whether a  
30 charge is made for such services.

31 (c)(i) "Eligible computer data center" means a computer data  
32 center:

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1 (A) Located in a county in which the unemployment rate is above  
2 the statewide average unemployment rate during the calendar years of  
3 2010 or 2011;

4 (B) Having at least twenty thousand square feet dedicated to  
5 housing working servers, where the server space has not previously  
6 been dedicated to housing working servers; and

7 (C) For which the commencement of construction occurs after March  
8 31, 2010, and before July 1, 2012. For purposes of this section,  
9 "commencement of construction" means the date that a building permit  
10 is issued under the building code adopted under RCW 19.27.031 for  
11 construction of the computer data center. The construction of a  
12 computer data center includes the expansion, renovation, or other  
13 improvements made to existing facilities, including leased or rented  
14 space. "Commencement of construction" does not include soil testing,  
15 site clearing and grading, site preparation, or any other related  
16 activities that are initiated before the issuance of a building permit  
17 for the construction of the foundation of a computer data center.

18 (ii) With respect to facilities in existence on the effective date  
19 of this act that are expanded, renovated, or otherwise improved after  
20 March 31, 2010, an eligible computer data center includes only the  
21 portion of the computer data center meeting the requirements in  
22 (c)(i)(B) of this subsection.

23 (d) "Eligible power infrastructure" means all fixtures and  
24 equipment necessary for the transformation, distribution, or  
25 management of electricity that is required to operate eligible server  
26 equipment within an eligible computer data center. The term includes  
27 electrical substations, generators, wiring, and cogeneration  
28 equipment.

29 (e) "Eligible server equipment" means the original server  
30 equipment installed in an eligible computer data center on or after  
31 April 1, 2010.

32 (f) "Qualifying business" means a business entity that exists for  
33 the primary purpose of engaging in commercial activity for profit and  
34 that is the owner or lessee of an eligible computer data center. The

1 term does not include the state or federal government or any of their  
2 departments, agencies, and institutions; tribal governments; political  
3 subdivisions of this state; or any municipal, quasi-municipal, public,  
4 or other corporation created by the state or federal government,  
5 tribal government, municipality, or political subdivision of the  
6 state.

7 (g) "Server" means blade or rack-mount server computers used in a  
8 computer data center exclusively to provide electronic data storage  
9 and data management services for internal use by the owner or lessee  
10 of the computer data center, for clients of the owner or lessee of the  
11 computer data center, or both. "Server" does not include personal  
12 computers.

13 (h) "Server equipment" means the server chassis and all computer  
14 hardware contained within the server chassis. "Server equipment" also  
15 includes computer software necessary to operate the server. "Server  
16 equipment" does not include the racks upon which the server chassis is  
17 installed, and computer peripherals such as keyboards, monitors,  
18 printers, mice, and other devices that work outside of the computer.

19 (10) This section expires July 1, 2027.

20  
21 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes  
24 effect April 1, 2010."

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27 Renumber the sections consecutively and correct any internal  
28 references accordingly.

29  
30 **SSB 6789 - S AMD 422**  
31 By Senator Rockefeller

32 NOT ADOPTED 3/16/2010  
33 On page 1, line 1 of the title, strike "exemptions" and insert  
34 "deferrals"

1 On page 1, line 2 of the title, after "centers;" insert "adding a  
2 new section to chapter 82.32 RCW; providing an effective date;  
3 providing expiration dates; and declaring an emergency."  
4

EFFECT: Changes the sales and use tax exemption to a sales and use tax deferral payable in 10 equal parts 5 years after the completion of the project. The Application deadline is extended to July 1, 2012 instead of July 1, 2011. The deferral program expires in 2027. The requirement that only 4 datacenters can qualify is removed. The requirement that a project must be in a rural county is changed to a project that is in a county in which the unemployment rate is above the state average for either 2010 or 2011.

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