

SSB 6430 - S AMD 676

By Senators Hill, Liiias

ADOPTED 03/11/2014

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

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

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

12 (2) It is the legislature's specific public policy objective to  
13 improve industry competitiveness and create or retain more jobs. It is  
14 the legislature's intent to provide a business and occupation tax  
15 credit for high-technology companies performing research and  
16 development and a sales and use tax deferral for certain construction  
17 and equipment purchases for new and expanding high-technology companies  
18 conducting research and development in the fields of advanced  
19 computing, advanced materials, biotechnology, electronic device  
20 technology, or environmental technology, in order to reduce the  
21 business costs of performing research and development in specified  
22 areas and to reduce the cost of certain construction and equipment  
23 purchases used for research and development, thereby encouraging  
24 investments in research and development, thereby increasing the number  
25 of firms in the industry performing research and development  
26 activities, thereby increasing the number of jobs performing research  
27 and development in the high-technology industry.

28 (3) If a review finds that the number of businesses participating  
29 in the credit and deferral programs, and the overall number of jobs for  
30 businesses participating in the credit and deferral programs performing

1 research and development, have increased compared to the number at the  
2 time of enactment, then the legislature intends to extend the  
3 expiration date of the tax preferences.

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

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

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

15 (2) The credit is calculated as follows:

16 (a) Determine the greater of the amount of qualified research and  
17 development expenditures of a person or eighty percent of amounts  
18 received by a person other than a public educational or research  
19 institution in compensation for the conduct of qualified research and  
20 development;

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

23 (c) Multiply the amount determined under (b) of this subsection by  
24 the following:

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

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

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

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

34 (v) For the calendar year ending December 31, 2010, and thereafter,  
35 1.50 percent.

36 For purposes of calculating the credit, if a person's reporting  
37 period is less than annual, the person may use an estimated average tax

1 rate for the calendar year for which the credit is claimed by using the  
2 person's average tax rate for each reporting period. A person who uses  
3 an estimated average tax rate must make an adjustment to the total  
4 credit claimed for the calendar year using the person's actual average  
5 tax rate for the calendar year when the person files its last return  
6 for the calendar year for which the credit is claimed.

7 (3) Any person entitled to the credit provided in subsection (2) of  
8 this section as a result of qualified research and development  
9 conducted under contract may assign all or any portion of the credit to  
10 the person contracting for the performance of the qualified research  
11 and development.

12 (4) The credit, including any credit assigned to a person under  
13 subsection (3) of this section, must be claimed against taxes due for  
14 the same calendar year in which the qualified research and development  
15 expenditures are incurred. The credit, including any credit assigned  
16 to a person under subsection (3) of this section, for each calendar  
17 year may not exceed the lesser of two million dollars or the amount of  
18 tax otherwise due under this chapter for the calendar year.

19 (5) For any person claiming the credit, including any credit  
20 assigned to a person under subsection (3) of this section, whose  
21 research and development spending during the calendar year in which the  
22 credit is claimed fails to exceed 0.92 percent of the person's taxable  
23 amount during the same calendar year or who is otherwise ineligible,  
24 the department must declare the taxes against which the credit was  
25 claimed to be immediately due and payable. The department must assess  
26 interest, but not penalties, on the taxes against which the credit was  
27 claimed. Interest must be assessed at the rate provided for delinquent  
28 excise taxes under chapter 82.32 RCW, retroactively to the date the  
29 credit was claimed, and accrues until the taxes against which the  
30 credit was claimed are repaid. Any credit assigned to a person under  
31 subsection (3) of this section that is disallowed as a result of this  
32 section may be claimed by the person who performed the qualified  
33 research and development subject to the limitations set forth in  
34 subsection (4) of this section.

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

37 (7) For the purpose of this section:

1 (a) "Average tax rate" means a person's total tax liability under  
2 this chapter for the calendar year for which the credit is claimed  
3 divided by the taxpayer's total taxable amount under this chapter for  
4 the calendar year for which the credit is claimed.

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

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

17 (d) "Research and development spending" means qualified research  
18 and development expenditures plus eighty percent of amounts paid to a  
19 person other than a public educational or research institution to  
20 conduct qualified research and development.

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

26 (8) This section expires (~~January~~) October 1, 2015.

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

29 (1) Except as provided in subsection (2) of this section, the  
30 department (~~shall~~) must issue a sales and use tax deferral  
31 certificate for state and local sales and use taxes due under chapters  
32 82.08, 82.12, and 82.14 RCW on each eligible investment project.

33 (2) No certificate may be issued for an investment project that has  
34 already received a deferral under chapter 82.60 RCW or this chapter,  
35 except that an investment project for qualified research and  
36 development that has already received a deferral may also receive an

1 additional deferral certificate for adapting the investment project for  
2 use in pilot scale manufacturing.

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

4 NEW SECTION. **Sec. 4.** (1) The high-technology research and  
5 development investment work group is established. The work group  
6 consists of the following members:

7 (a) One member from each of the two largest caucuses of the senate,  
8 appointed by the president of the senate;

9 (b) One member from each of the two largest caucuses of the house  
10 of representatives, appointed by the speaker of the house of  
11 representatives;

12 (c) The director of the department of commerce who must serve as  
13 chair of the work group;

14 (d) The director of the department of revenue or his or her  
15 designee;

16 (e) The presidents of the University of Washington and Washington  
17 State University or their designees;

18 (f)(i) One representative from each of the following industries  
19 appointed by the governor:

20 (A) Advanced computing;

21 (B) Advanced materials;

22 (C) Biotechnology;

23 (D) Electronic device technology; and

24 (E) Environmental technology.

25 (ii) A statewide organization representing each of the industries  
26 listed in this subsection (1)(f) must submit a list of three names to  
27 the governor. The governor must make each appointment from each list  
28 submitted or request the statewide organization to submit a new list  
29 with up to three additional names.

30 (2)(a) The work group must develop recommendations for the  
31 legislature to improve the competitiveness of the high-technology  
32 research and development industry through investment strategies that  
33 keep the state's tax incentives competitive and support the ongoing  
34 development of a highly trained workforce. At minimum, the  
35 recommendations must include provisions addressing the following:

36 (i) Ways to better align the technology transformation, research,

1 and high-demand degree production activities of higher education  
2 institutions with industry spending to bolster increased development of  
3 a high-technology industry within the state, including:

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

7 (B) Expanding the high-technology research and development  
8 activities at higher education institutions in a manner that will  
9 support the development and commercialization of technology into new  
10 products, processes, applications, materials, or services; and

11 (C) Expanding and improving the high-demand degree programs offered  
12 at higher education institutions in a manner that supports increased  
13 numbers and efficiency of high-demand degrees produced.

14 (ii) The design, size, and scope of high-technology research and  
15 development tax preference programs after October 1, 2015.

16 (b) In developing these recommendations, the work group must  
17 examine current resources devoted to high-technology research and  
18 development tax preferences and determine the best mix of funding to  
19 keep the state's high-technology research and development industry  
20 competitive and to provide a highly trained workforce to support the  
21 industry.

22 (c) The work group must submit its proposal to the governor and  
23 fiscal committees of the legislature by December 1, 2014.

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

25 **Sec. 5.** RCW 82.08.02565 and 2011 c 23 s 2 are each amended to read  
26 as follows:

27 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to  
28 a manufacturer or processor for hire of machinery and equipment used  
29 directly in a manufacturing operation or research and development  
30 operation, to sales to a person engaged in testing for a manufacturer  
31 or processor for hire of machinery and equipment used directly in a  
32 testing operation, or to sales of or charges made for labor and  
33 services rendered in respect to installing, repairing, cleaning,  
34 altering, or improving the machinery and equipment.

35 (b) Sellers making tax-exempt sales under this section must obtain  
36 from the purchaser an exemption certificate in a form and manner

1 prescribed by the department by rule. The seller must retain a copy of  
2 the certificate for the seller's files.

3 (2) For purposes of this section and RCW 82.12.02565:

4 (a) "Machinery and equipment" means industrial fixtures, devices,  
5 and support facilities, and tangible personal property that becomes an  
6 ingredient or component thereof, including repair parts and replacement  
7 parts. "Machinery and equipment" includes pollution control equipment  
8 installed and used in a manufacturing operation, testing operation, or  
9 research and development operation to prevent air pollution, water  
10 pollution, or contamination that might otherwise result from the  
11 manufacturing operation, testing operation, or research and development  
12 operation. "Machinery and equipment" also includes digital goods.

13 (b) "Machinery and equipment" does not include:

14 (i) Hand-powered tools;

15 (ii) Property with a useful life of less than one year;

16 (iii) Buildings, other than machinery and equipment that is  
17 permanently affixed to or becomes a physical part of a building; and

18 (iv) Building fixtures that are not integral to the manufacturing  
19 operation, testing operation, or research and development operation  
20 that are permanently affixed to and become a physical part of a  
21 building, such as utility systems for heating, ventilation, air  
22 conditioning, communications, plumbing, or electrical.

23 (c) Machinery and equipment is "used directly" in a manufacturing  
24 operation, testing operation, or research and development operation if  
25 the machinery and equipment:

26 (i) Acts upon or interacts with an item of tangible personal  
27 property;

28 (ii) Conveys, transports, handles, or temporarily stores an item of  
29 tangible personal property at the manufacturing site or testing site;

30 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
31 tests tangible personal property at the site or away from the site;

32 (iv) Provides physical support for or access to tangible personal  
33 property;

34 (v) Produces power for, or lubricates machinery and equipment;

35 (vi) Produces another item of tangible personal property for use in  
36 the manufacturing operation, testing operation, or research and  
37 development operation;

1 (vii) Places tangible personal property in the container, package,  
2 or wrapping in which the tangible personal property is normally sold or  
3 transported; or

4 (viii) Is integral to research and development as defined in RCW  
5 82.63.010.

6 (d) "Manufacturer" means a person that qualifies as a manufacturer  
7 under RCW 82.04.110. "Manufacturer" also includes a person that prints  
8 newspapers or other materials.

9 (e) "Manufacturing" means only those activities that come within  
10 the definition of "to manufacture" in RCW 82.04.120 and are taxed as  
11 manufacturing or processing for hire under chapter 82.04 RCW, or would  
12 be taxed as such if such activity were conducted in this state or if  
13 not for an exemption or deduction. "Manufacturing" also includes  
14 printing newspapers or other materials. An activity is not taxed as  
15 manufacturing or processing for hire under chapter 82.04 RCW if the  
16 activity is within the purview of chapter 82.16 RCW.

17 (f) "Manufacturing operation" means the manufacturing of articles,  
18 substances, or commodities for sale as tangible personal property. A  
19 manufacturing operation begins at the point where the raw materials  
20 enter the manufacturing site and ends at the point where the processed  
21 material leaves the manufacturing site. With respect to the production  
22 of class A or exceptional quality biosolids by a wastewater treatment  
23 facility, the manufacturing operation begins at the point where class  
24 B biosolids undergo additional processing to achieve class A or  
25 exceptional quality standards. Notwithstanding anything to the  
26 contrary in this section, the term also includes that portion of a  
27 cogeneration project that is used to generate power for consumption  
28 within the manufacturing site of which the cogeneration project is an  
29 integral part. The term does not include the preparation of food  
30 products on the premises of a person selling food products at retail.

31 (g) "Cogeneration" means the simultaneous generation of electrical  
32 energy and low-grade heat from the same fuel.

33 (h) "Research and development operation" means engaging in research  
34 and development as defined in RCW 82.63.010 by a manufacturer or  
35 processor for hire, if the research and development is integral to the  
36 buyer's development of prewritten computer software for sale as a  
37 product or a service described in RCW 82.04.050(6)(b), or the buyer's  
38 manufacturing operation. For purposes of this section and RCW

1 82.12.02565, persons engaged in the development of prewritten computer  
2 software that is not transferred to purchasers by means of a tangible  
3 storage media are deemed to be manufacturers.

4 (i) "Testing" means activities performed to establish or determine  
5 the properties, qualities, and limitations of tangible personal  
6 property.

7 (j) "Testing operation" means the testing of tangible personal  
8 property for a manufacturer or processor for hire. A testing operation  
9 begins at the point where the tangible personal property enters the  
10 testing site and ends at the point where the tangible personal property  
11 leaves the testing site. The term also includes the testing of  
12 tangible personal property for use in that portion of a cogeneration  
13 project that is used to generate power for consumption within the  
14 manufacturing site of which the cogeneration project is an integral  
15 part. The term does not include the testing of tangible personal  
16 property for use in the production of electricity by a light and power  
17 business as defined in RCW 82.16.010 or the preparation of food  
18 products on the premises of a person selling food products at retail.

19 (3) It is the intent of the legislature that this tax preference is  
20 being amended to correct a technical inconsistency, and these  
21 corrections are not intended to create a new or expanded tax preference  
22 under RCW 82.32.805."

**SSB 6430** - S AMD  
By Senators Hill, Liiias

**ADOPTED 03/11/2014**

23 On page 1, line 2 of the title, after "development;" strike the  
24 remainder of the title and insert "amending RCW 82.04.4452, 82.63.030,  
25 and 82.08.02565; creating new sections; and providing expiration  
26 dates."

EFFECT: Extends the high tech R&D tax credit and deferral until

October 1, 2015, nine months rather than twenty-five years. Creates a high tech R&D investment work group to develop recommendations that integrate high tech R&D activities with investments in higher education. The report from the work group is due December 1, 2014. Clarifies that when manufacturing software, persons can be provided with a digital copy rather than tangible storage media. Includes legislators as members of the work group. Modifies what the work group should study and recommend to the legislature.

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