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**SENATE BILL 5629**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Brown, Becker, Ericksen, Warnick, and Palumbo

AN ACT Relating to promoting small modular reactors in Washington; amending RCW 43.21F.025, 43.21F.088, 82.85.010, 82.85.020, 82.85.030, 82.85.040, 82.85.050, and 82.85.080; adding a new section to chapter 82.04 RCW; creating a new section; and providing expiration dates.

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

**Sec.**  RCW 43.21F.025 and 2010 c 271 s 402 are each amended to read as follows:

(1) "Assistant director" means the assistant director of the department of commerce responsible for energy policy activities;

(2) "Department" means the department of commerce;

(3) "Director" means the director of the department of commerce;

(4) "Distributor" means any person, private corporation, partnership, individual proprietorship, utility, including investor-owned utilities, municipal utility, public utility district, joint operating agency, or cooperative, which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state;

(5) "Energy" means petroleum or other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material; electricity; solar radiation; geothermal resources; hydropower; organic waste products; wind; tidal activity; any other substance or process used to produce heat, light, or motion; or the savings from nongeneration technologies, including conservation or improved efficiency in the usage of any of the sources described in this subsection;

(6) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, joint operating agency, or any other entity, public or private, however organized; ((~~and~~))

(7) "Small modular reactor" means a scalable nuclear power plant using reactors that each have a gross power output no greater than three hundred megawatts electric, and where each reactor is designed for factory manufacturing and ease of transport, such as by truck, rail, or barge; and

(8) "State energy strategy" means the document developed and updated by the department as allowed in RCW 43.21F.090.

**Sec.**  RCW 43.21F.088 and 2010 c 271 s 403 are each amended to read as follows:

(1) The state ((~~shall~~)) must use the following principles to guide development and implementation of the state's energy strategy and to meet the goals of RCW 43.21F.010:

(a) Pursue all cost-effective energy efficiency and conservation as the state's preferred energy resource, consistent with state law;

(b) Ensure that the state's energy system meets the health, welfare, and economic needs of its citizens with particular emphasis on meeting the needs of low-income and vulnerable populations;

(c) Maintain and enhance economic competitiveness by ensuring an affordable and reliable supply of energy resources and by supporting clean energy technology innovation, including small modular reactors, access to clean energy markets worldwide, and clean energy business and workforce development;

(d) Reduce dependence on fossil fuel energy sources through improved efficiency and development of cleaner energy sources, such as bioenergy, low‑carbon energy sources, and natural gas, and leveraging the indigenous resources of the state for the production of clean energy;

(e) Improve efficiency of transportation energy use through advances in vehicle technology, increased system efficiencies, development of electricity, biofuels, and other clean fuels, and regional transportation planning to improve transportation choices;

(f) Meet the state's statutory greenhouse gas limits and environmental requirements as the state develops and uses energy resources;

(g) Build on the advantage provided by the state's clean regional electrical grid by expanding and integrating additional carbon-free and carbon‑neutral generation, and improving the transmission capacity serving the state;

(h) Make state government a model for energy efficiency, use of clean and renewable energy, and greenhouse gas-neutral operations; and

(i) Maintain and enhance our state's existing energy infrastructure.

(2) The department ((~~shall~~)) must:

(a) During energy shortage emergencies, give priority in the allocation of energy resources to maintaining the public health, safety, and welfare of the state's citizens and industry in order to minimize adverse impacts on their physical, social, and economic well-being;

(b) Develop and disseminate impartial and objective energy information and analysis, while taking full advantage of the capabilities of the state's institutions of higher education, national laboratory, and other organizations with relevant expertise and analytical capabilities;

(c) Actively seek to maximize federal and other nonstate funding and support to the state for energy efficiency, renewable energy, emerging energy technologies, and other activities of benefit to the state's overall energy future; and

(d) Monitor the actions of all agencies of the state for consistent implementation of the state's energy policy including applicable statutory policies and goals relating to energy supply and use.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in (section 4, chapter . . ., Laws of 2019) (section 4 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(3) It is the legislature's specific public policy objective to retain or increase the number of jobs in the small modular reactor industry in Washington. It is the legislature's intent to exempt from the tax levied by RCW 82.04.240, 82.04.250, and 82.04.270, the manufacture or sale at wholesale or retail of small modular reactors, thereby increasing the ability of such firms to invest in and expand their Washington operations, thereby increasing the number of jobs in the small modular reactor industry in Washington.

(4) If a review finds that the number of jobs in the small modular reactor industry in Washington has increased by ten percent compared to the number of those jobs at the time of enactment, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to:

(a) The annual tax performance report that a taxpayer reporting under the tax rate provided in section 4, chapter . . ., Laws of 2019 (section 4 of this act) must file with the department of revenue; and

(b) Employment data available from the employment security department.

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

(1) This chapter does not apply to any person engaging within this state in the business of: (a) Manufacturing small modular reactors; or (b) making sales at wholesale or retail of small modular reactors manufactured by that person.

(2) This chapter does not apply to any person engaging within this state in the business of: (a) Manufacturing any item that is designed to be a component or part of a small modular reactor; or (b) making sales at wholesale or retail of an item designed to be a component or part of a small modular reactor, when such item is manufactured by that person.

(3) To qualify for the exemption under this section, a person engaged in the business described in subsection (1) or (2) of this section must develop an apprenticeship program, training program, or workforce development program related to the business. Such programs may be developed in cooperation with an institution of higher education, as defined under RCW 28B.10.016(4).

(4) For the purposes of this section, "small modular reactor" means a scalable nuclear power plant using reactors that each have a gross power output no greater than three hundred megawatts electric, and where each reactor is designed for factory manufacturing and ease of transport, such as by truck, rail, or barge.

(5) The expiration date provisions of RCW 82.32.805(1)(a) do not apply to this section.

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

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

(2)(a) This subsection is the tax preference performance statement for the sales and use tax deferral provided in RCW 82.85.040 on expenditures made to build or expand qualified investment projects and purchases of machinery and equipment. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

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

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

(3) This section expires January 1, ((~~2026~~)) 2030.

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

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

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

(b) "Eligible investment project" means an investment project for qualified buildings and machinery and equipment on ((~~two~~)) new, renovated, or expanded manufacturing operations ((~~per calendar year, one of which must be located east of the crest of the Cascade mountains and one of which must be located west of the crest of the Cascade mountains~~)). Eligible investment projects that utilize or produce small modular reactors or other green technologies are encouraged. The deferral provided in this section only applies to the state and local sales and use taxes due on the first ten million dollars in costs for qualified buildings and machinery and equipment.

(c) "Initiation of construction" has the same meaning as in RCW 82.63.010.

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

(e) "Manufacturing" has the same meaning as provided in RCW 82.04.120.

(f) "Person" has the same meaning as provided in RCW 82.04.030.

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

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

(i) "Recipient" means a person receiving a tax deferral under this chapter.

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

(2) This section expires January 1, ((~~2026~~)) 2030.

**Sec.**  RCW 82.85.030 and 2015 3rd sp.s. c 6 s 403 are each amended to read as follows:

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

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

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

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual ((~~survey~~)) tax performance report required under RCW ((~~82.32.585~~)) 82.32.534; and

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

(3) This section expires January 1, 2030.

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

(1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. ((~~The deferrals are available on a first-in-time basis.~~)) The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

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

(3) This section expires January 1, ((~~2026~~)) 2030.

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

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

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

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

(4) This section expires January 1, 2030.

**Sec.**  RCW 82.85.080 and 2015 3rd sp.s. c 6 s 408 are each amended to read as follows:

(1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual ((~~survey~~)) tax performance report with the department under RCW ((~~82.32.585~~)) 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.85.030, the lessee must file a complete annual ((~~survey~~)) tax performance report, and the applicant is not required to file a complete annual ((~~survey~~)) tax performance report.

(2) If, on the basis of a ((~~survey~~)) tax performance report under RCW ((~~82.32.585~~)) 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter due to the fact the investment project is no longer used for qualified activities, the amount of deferred taxes outstanding for the investment project is immediately due and payable.

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

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