

HOUSE BILL REPORT

2SHB 1988

As Passed House:

March 4, 2022

Title: An act relating to tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

Brief Description: Concerning tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Shewmake, Berry and Paul; by request of Office of Financial Management).

Brief History:

Committee Activity:

Finance: 2/1/22, 2/17/22 [DPS];

Appropriations: 2/24/22, 2/28/22 [DP2S(w/o sub FIN)].

Floor Activity:

Passed House: 3/4/22, 56-40.

Brief Summary of Second Substitute Bill

- Establishes a retail sales and use tax deferral program for certain investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.
- Reduces the amount of state sales and use tax that must be repaid by eligible projects if the recipient complies with specified labor standards.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Vick and Young.

Staff: Rachelle Harris (786-7137).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Finance. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff, Jacobsen, Rude, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Jackie Wheeler (786-7125).

Background:

Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 4.0 percent, depending on the location.

Tax Deferral Programs.

Several tax deferral programs in statute provide businesses the ability to postpone payment of sales and use taxes if they meet specific requirements and performance criteria. Some deferral programs require either partial or complete repayment of taxes. Once an application for a deferral program is filed and approved, businesses will be granted a tax deferral certificate which must be provided to vendors and contractors to defer sales or use tax.

Clean Fuels Program.

In 2021 the Legislature directed the Department of Ecology to adopt rules establishing a Clean Fuels Program to reduce the carbon intensity of transportation fuels to 20 percent below 2017 levels by 2038. The program will begin in January 2023.

Tax Preference Performance Statements and Expiration.

Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Second Substitute Bill:

State and Local Sales and Use Tax Deferral Program - Clean Technology.

A retail sales and use tax deferral certificate program is established for eligible investment projects (projects) in clean technology manufacturing, clean alternative fuels production, and renewable energy storage.

To be eligible, a project must have at least \$2 million in new, renovated, or expanded:

- manufacturing operations for property exclusively incorporated as an ingredient or component used in the generation of:
 - specified zero-emission vehicles;
 - charging and fueling infrastructure for specified zero-emission vehicles;
 - renewable and green electrolytic hydrogen;
 - renewable hydrogen carriers;
 - clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established in the Clean Fuels Program; or
 - electricity from renewable sources;
- equipment used in the storage of electricity generated by renewable resources;
- production facilities for clean fuel or renewable and green electrolytic hydrogen; or
- facilities to store electricity generated from renewable sources.

Repayment of Deferred Taxes.

Deferred taxes must begin to be repaid two years after project completion, and annually for nine subsequent years. Annual payments are 10 percent of the deferred taxes. The DOR may authorize an accelerated repayment schedule upon request. Interest may not be charged on any taxes deferred, but all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments.

One hundred percent of local retail sales and use taxes must be repaid.

The deferral recipient may receive a reduction of the state sales and use tax as follows:

- a 50 percent reduction if the Department of Labor and Industries (L&I) certifies that the project includes procurement and contracts with women, minority, or veteran-

owned businesses, and entities that have a history of complying with federal and state wage and hour laws, apprenticeship utilization, and preferred entry workers living in the project construction area;

- a 75 percent reduction if, in addition to meeting the 50 percent standard, the project compensates workers at prevailing wages determined by local collective bargaining; or
- a 100 percent reduction if the L&I certifies that the project is developed under a community workforce agreement or project labor agreement.

For projects seeking a reduction in state sales and use tax by meeting labor standards, the L&I must adopt rules and set minimum requirements for all labor standards including a standardized documentation and certification process. The L&I must consult with the Office of Minority and Women's Businesses Enterprises (OMWBE), the Department of Veterans Affairs (DVA), and the Washington Apprenticeship and Training council to set labor standards and establish good faith efforts to meet those standards. Projects that seek procurement from and contracts with minority- or women-owned businesses must consult with the OMWBE. Projects that seek procurement from and contracts with veteran-owned businesses must consult with the DVA.

The deferral recipient must file annual tax performance reports beginning in the first calendar year after the project is complete and continue filing them through the end of the calendar year in which the final repayment occurs. If the investment project is not complete within five years from the issue of the deferral certificate, or if the DOR finds the project is not eligible for the tax deferral due to alternative use, then all or a portion of the deferred tax is immediately due and payable based on a declining schedule.

Administration of Deferral Program.

Applications for the deferral must be made to the DOR before initiation of construction or the acquisition of machinery or equipment. Applications must be received no later than June 30, 2032. The DOR must rule on the application within 60 days and issue a sales and use tax deferral certificate for state and local taxes for each eligible project. Meaningful construction on the project must begin within two years of receiving the deferral certificate. The deferral program expires January 1, 2033.

No certificate may be issued if the investment project has already received a deferral for investment projects in high-unemployment rural counties, for job creation and economic development, or under this this legislation. The DOR is required to keep a running total of all deferrals granted during each fiscal biennium.

A TPPS is included identifying the public policy objective to build manufacturing capacity for carbon-free electricity and to financially incentivize the use of high labor standards. JLARC must use at least the first five years of data to review the performance of the tax preference.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 2, 2022.

Effective Date: The bill takes effect on July 1, 2022.

Staff Summary of Public Testimony (Finance):

(In support) We need to start building the technology to move to a cleaner energy future. Solar panels, clean alternative fuels, and other energy storage are much needed developments in this area. The tax incentives in this bill are paired with high labor standards which will produce good family-wage jobs. The language for labor standards and use of minority-owned business will need to be improved. This is part of the Governor's clean energy economy approach. The supply chain is a critical part of a good clean economy, and the labor language is modeled on the Clean Energy Transformation Act. Tying the labor standards to deferral of tax payments is a good incentive for well-oriented labor practices in conjunction with the state's move to clean energy. Inclusion of meaningful labor standards is wonderful, and connecting those standards to tax preferences allows our energy transition to be good for the whole state. The reduction in repayment required for high labor standards is great and keeps the wellbeing of our workforce as a top priority. The Clean Energy Transformation Act should be a benchmark for all state policies. This will drive innovation and opportunity in rural communities.

(Opposed) Open and fair competition in labor standards is important, and government should not be able to mandate only a certain type of contractor. Requiring the use of a project labor agreement mandates union contractors, which excludes a lot of workers from participation. The project labor agreement language is not necessary to carry out the desires of the bill. The entire construction industry should have the opportunity to bid on these jobs.

(Other) The Clean Energy Transformation Act allows other versions of energy storage than required under this bill, and it would be difficult to align these things. In order to get the high credit against the deferral, public utility districts are often in the wrong category to qualify for labor participation. Douglas County would like to be eligible, and is currently making the nation's first clean hydrogen facility.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill will better position Washington's workers to build the infrastructure that is necessary to meet our state's decarbonization and climate change mitigation goals while keeping the well-being of our workforce front and center in this transition. It is important that tax breaks like these include the meaningful labor standards modeled on the successful provisions of the Clean Energy Transformation Act that are included in this bill to ensure it creates the best possible jobs. The inclusion of component manufacturing is

also important to ensure that the clean energy supply chain is built and manufactured here in Washington. It will make the supply chain expand more rapidly in the state, allowing for manufacturers to relocate and produce locally. This bill will attract investment and research development and will clearly establish Washington as a positive environment for this kind of activity. It is critical that the bill pass this session as there are projects in the planning pipeline that would be eligible and would put Washingtonians to work right now. A suggested technical change is to align the definition of "green electrolytic hydrogen" with the one provided in other legislation.

(Opposed) None.

Persons Testifying (Finance): (In support) Representative Sharon Shewmake, prime sponsor; Scott Merriman, Office of Financial Management; Christina Bayanian, Sheet Metal Workers Local 66; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Erin Frasier, Washington State Building and Construction Trades Council; and Matthew Hepner, Industrial Brotherhood of Electrical Workers and Certified Electrical Workers of Washington.

(Opposed) Jerry Vanderwood, Associated General Contractors of Washington; and Sophia Steele, Associated Builders and Contractors of Washington.

(Other) Dave Warren, Douglas County Public Utility District, Washington Green Hydrogen Alliance, and Renewable Hydrogen Alliance.

Persons Testifying (Appropriations): Joe Kendo, Washington State Labor Council and American Federation of Labor and Congress of Industrial Organizations; Erin Frasier, Washington State Building and Construction Trades Council; Rod Gleysteen; and Jeff Gombosky, Renewable Northwest.

Persons Signed In To Testify But Not Testifying (Finance): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.