

# SENATE BILL REPORT

## 2SHB 1988

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As of March 7, 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:** Passed House: 3/4/22, 56-40.

**Committee Activity:** Ways & Means: 3/07/22.

### Brief Summary of 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.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jeffrey Mitchell (786-7438)

**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

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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 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 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 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;
- 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 Department of Revenue (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 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, L&I must adopt rules and set minimum requirements for all labor standards including a standardized documentation and certification process. 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 OMWBE. Projects that seek procurement from and contracts with veteran-owned businesses must consult with 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 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 DOR before initiation of construction or the acquisition of machinery or equipment. Applications must be received no later than June 30, 2032. 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. DOR is required to keep a running total of all

deferrals granted during each fiscal biennium.

The bill is exempt from a TPPS and does not expire.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill will help transition the state to a clean energy economy while keeping the well-being of our workforce front and center. There are projects currently in the pipeline that are eligible so it is critical that the bill pass this session. The tax incentives in this bill make the state more attractive to innovators and entrepreneurs in the green hydrogen field. This bill will reduce the cost of financing for hybrid renewable energy development.

CON: The labor provisions in the bill are counter to fair and open competition.

**Persons Testifying:** PRO: Jeff Gombosky, Renewable Northwest; Erin Frasier, Washington State Building & Construction Trades Council; Bill Patz.

CON: Patrick Hughes; Jerry VanderWood, Associated General Contractors (AGC).

**Persons Signed In To Testify But Not Testifying:** No one.