

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1988

67th Legislature
2022 Regular Session

Passed by the House March 4, 2022
Yeas 56 Nays 40

**Speaker of the House of
Representatives**

Passed by the Senate March 10, 2022
Yeas 30 Nays 19

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1988** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1988

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By House Appropriations (originally sponsored by Representatives Shewmake, Berry, and Paul; by request of Office of Financial Management)

READ FIRST TIME 02/28/22.

1 AN ACT Relating to tax deferrals for investment projects in clean
2 technology manufacturing, clean alternative fuels production, and
3 renewable energy storage; adding a new chapter to Title 82 RCW;
4 providing an effective date; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

11 (2) "Eligible investment project" means an investment project of
12 at least \$2,000,000 in either qualified buildings or qualified
13 machinery and equipment, or both, for any of the following new,
14 renovated, or expanded:

15 (a) Manufacturing operations;

16 (b) Facilities to produce clean fuels, subject to the limitations
17 in subsection (8)(d) of this section, renewable hydrogen, green
18 electrolytic hydrogen, or green hydrogen carriers; or

19 (c) Storage facilities.

20 (3) "Green electrolytic hydrogen" means hydrogen produced through
21 electrolysis and does not include hydrogen manufactured using steam

1 reforming or any other conversion technology that produces hydrogen
2 from a fossil fuel feedstock.

3 (4) "Green hydrogen carrier" means a chemical compound, created
4 using electricity or renewable resources as energy input and without
5 use of fossil fuel as a feedstock, from renewable hydrogen or green
6 electrolytic hydrogen for the purposes of transportation, storage,
7 and dispensing of hydrogen.

8 (5)(a) "Initiation of construction" means the date that a
9 building permit is issued under the building code adopted under
10 RCW 19.27.031 for:

11 (i) Construction of the qualified building, if the underlying
12 ownership of the building vests exclusively with the person receiving
13 the economic benefit of the deferral;

14 (ii) Construction of the qualified building, if the economic
15 benefits of the deferral are passed to a lessee as provided in
16 section 2 of this act; or

17 (iii) Tenant improvements for a qualified building, if the
18 economic benefits of the deferral are passed to a lessee as provided
19 in section 2 of this act.

20 (b) "Initiation of construction" does not include soil testing,
21 site clearing and grading, site preparation, or any other related
22 activities that are initiated before the issuance of a building
23 permit for the construction of the foundation of the building.

24 (c) If the eligible investment project is a phased project,
25 "initiation of construction" applies separately to each phase.

26 (6) "Investment project" means an investment in either qualified
27 buildings or qualified machinery and equipment, or both, including
28 labor and services rendered in the planning, installation, and
29 construction of the project.

30 (7) "Manufacturing" has the same meaning as "to manufacture" in
31 RCW 82.04.120.

32 (8) "Manufacturing operation" means manufacturing tangible
33 personal property exclusively incorporated as an ingredient or
34 component of or used in the generation of:

35 (a) Passenger cars, light duty trucks, medium duty passenger
36 vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or
37 motorcycles that emit no exhaust gas from the onboard source of
38 power, other than water vapor;

1 (b) Charging and fueling infrastructure for electric, hydrogen,
2 or other vehicle types that emits no exhaust gas from the onboard
3 source of power, other than water vapor;

4 (c) Renewable and green electrolytic hydrogen, including
5 preparing renewable and green electrolytic hydrogen for distribution
6 or converting it to a green hydrogen carrier;

7 (d) Clean fuel with associated greenhouse gas emissions not
8 exceeding 80 percent of the 2017 levels established under RCW
9 70A.535.020 or its successor statute under chapter 70A.535 RCW;

10 (e) Electricity from renewable resources; or

11 (f) Storage facilities.

12 (9) "Meaningful construction" means an active construction site,
13 where excavation of a building site, laying of a building foundation,
14 or other tangible signs of construction are taking place and that
15 clearly show a progression in the construction process at the
16 location designated by the taxpayer in the application for deferral.
17 Planning, permitting, or land clearing before excavation of the
18 building site, without more, does not constitute "meaningful
19 construction."

20 (10) "Operationally complete" means the eligible investment
21 project is capable of being used for its intended purpose as
22 described in the application.

23 (11) "Person" has the same meaning as in RCW 82.04.030.

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

34 (13) "Qualified machinery and equipment" means all new industrial
35 fixtures, equipment, and support facilities that are an integral and
36 necessary part of a manufacturing operation. "Qualified machinery and
37 equipment" includes: Computers; software; data processing equipment;
38 laboratory equipment; manufacturing components such as belts,
39 pulleys, shafts, and moving parts; molds, tools, and dies; operating

1 structures; and all equipment used to control, monitor, or operate
2 the machinery.

3 (14) "Recipient" means a person receiving a tax deferral under
4 this chapter.

5 (15) "Renewable resource" has the same meaning as in
6 RCW 82.08.816.

7 (16) "Storage facility" means a facility that:

8 (a) Accepts electricity as an energy source and uses a chemical,
9 thermal, mechanical, or other process to store energy for subsequent
10 delivery or consumption in the form of electricity; or

11 (b) Stores renewable hydrogen, green electrolytic hydrogen, or
12 green hydrogen carrier for subsequent delivery or consumption.

13 NEW SECTION. **Sec. 2.** The lessor or owner of a qualified
14 building is not eligible for a deferral under this chapter unless:

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

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

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

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

27 NEW SECTION. **Sec. 3.** (1) Applications for deferral of taxes
28 under this chapter must be made before initiation of the construction
29 of the eligible investment project or acquisition of equipment or
30 machinery. The application must be made to the department in a form
31 and manner prescribed by the department. The application must contain
32 information regarding the location of the eligible investment
33 project, the applicant's average employment in the state for the
34 prior year, estimated or actual new employment related to the
35 eligible investment project, estimated or actual wages of employees
36 related to the eligible investment project, estimated or actual
37 costs, time schedules for completion and operation, and other

1 information required by the department. The department must rule on
2 the application within 60 days.

3 (2) The department may not accept applications for the deferral
4 under this chapter after June 30, 2032.

5 (3) This section expires January 1, 2033.

6 NEW SECTION. **Sec. 4.** (1) The department must issue a sales and
7 use tax deferral certificate for state and local sales and use taxes
8 due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each
9 eligible investment project. The certificate may only be used to make
10 purchases of materials and equipment, labor, or services to be
11 incorporated in the eligible investment project at the location
12 listed on the certificate.

13 (2) No certificate may be issued for an investment project that
14 has already received a deferral under this chapter or chapter 82.60
15 or 82.85 RCW.

16 (3) No certificate may be issued for an eligible investment
17 project that has not had an application approved by the department as
18 provided in section 3 of this act.

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

21 (5) This section expires January 1, 2033.

22 NEW SECTION. **Sec. 5.** (1) The recipient of a deferral
23 certificate under section 4 of this act must begin meaningful
24 construction on an eligible investment project within two years of
25 receiving a deferral certificate unless construction was delayed due
26 to circumstances beyond the recipient's control. Lack of funding is
27 not considered a circumstance beyond the recipient's control.

28 (2) If the recipient does not begin meaningful construction on an
29 eligible investment project within two years of receiving a deferral
30 certificate, the deferral certificate issued under section 4 of this
31 act is invalid and taxes deferred under this chapter are due
32 immediately.

33 NEW SECTION. **Sec. 6.** (1) The recipient must begin paying the
34 deferred taxes in the second year after the date certified by the
35 department as the date on which the eligible investment project has
36 been operationally completed. The first payment of 10 percent of the
37 deferred taxes is due on December 31st of the second calendar year

1 after the certified date, with subsequent annual payments of 10
2 percent of the deferred taxes due on December 31st for each of the
3 following nine years.

4 (2) The department may authorize an accelerated repayment
5 schedule upon request of the recipient.

6 (3) Interest may not be charged on any taxes deferred under this
7 chapter for the period of deferral, although all other penalties and
8 interest applicable to delinquent excise taxes may be assessed and
9 imposed for delinquent payments under this chapter.

10 (4) The department must assess interest at the rate provided for
11 delinquent taxes, but not penalties, retroactively to the date of
12 deferral for a recipient who must repay deferred taxes under this
13 chapter because the department has found that a purchase is not
14 eligible for tax deferral.

15 (5) The debt for deferred taxes are not extinguished by
16 insolvency or other failure of the recipient.

17 (6) Transfer of ownership does not terminate the deferral. The
18 deferral is transferred, subject to the successor meeting the
19 eligibility requirements of this chapter, for the remaining periods
20 of the deferral.

21 NEW SECTION. **Sec. 7.** (1) The recipient of the deferral under
22 this chapter must receive a reduction of the amount of state sales
23 and use tax to be repaid under section 6 of this act only as follows:

24 (a) Fifty percent of the state sales and use tax deferred, if the
25 department of labor and industries certifies that the eligible
26 investment project includes procurement from and contracts with
27 women, minority, or veteran-owned businesses; procurement from and
28 contracts with entities that have a history of complying with federal
29 and state wage and hour laws and regulations; apprenticeship
30 utilization; and preferred entry for workers living in the area where
31 the eligible investment project is being constructed. In the event
32 that an eligible investment project is built without one or more of
33 these standards, and a project developer or its designated principal
34 contractor demonstrates that it has made all good faith efforts to
35 meet the standards but was unable to comply due to lack of
36 availability of qualified businesses or local hires, the department
37 of labor and industries may certify that the developer complied with
38 that standard;

1 (b) Seventy-five percent of the state sales and use tax deferred,
2 if the department of labor and industries certifies that the eligible
3 investment project complies with (a) of this subsection and
4 compensates workers at prevailing wage rates determined by local
5 collective bargaining as determined by the department of labor and
6 industries; or

7 (c) One hundred percent of the state sales and use tax deferred,
8 if the department of labor and industries certifies that the eligible
9 investment project is developed under a community workforce agreement
10 or project labor agreement.

11 (2)(a) The department of labor and industries must adopt
12 emergency and permanent rules to:

13 (i) Define and set minimum requirements for all labor standards
14 identified in subsection (1) of this section as well as documentation
15 requirements and a certification process. The certification process
16 and timeline must be designed to prevent undue delay to project
17 development; and

18 (ii) Set requirements for all good faith efforts under subsection
19 (1)(a) and (b) of this section. Requirements for all good faith
20 efforts must be designed to maximize the likelihood that the project
21 is completed with the standards, and include:

22 (A) Proactive outreach to women, minority, and veteran-owned
23 businesses;

24 (B) Advertising in local community publications and publications
25 appropriate to identified firms and with the office of minority and
26 women's business enterprises;

27 (C) Participating in community job fairs, conferences, and trade
28 shows; and

29 (D) Other measures.

30 (b) The standards for procurement from and contracts with women
31 and minority-owned businesses under subsection (1)(a) of this section
32 must include a requirement that the recipient of the deferral consult
33 with the office of minority and women's business enterprises to
34 develop a plan to meet the standards or good faith efforts. The
35 requirements for good faith efforts must include the office of
36 minority and women's business enterprises review to determine
37 compliance with the plan.

38 (c) The labor standard for procurement from and contracts with
39 veteran-owned businesses under subsection (1)(a) of this section must
40 include a requirement that the recipient of the deferral consult with

1 the department of veterans affairs to develop a plan to meet the
2 standards or good faith efforts. The requirements for good faith
3 efforts must include the department of veterans affairs review to
4 determine compliance with the plan.

5 (d) The department of labor and industries must consult with the
6 office of minority and women's business enterprises, the department
7 of veterans affairs, and the Washington apprenticeship and training
8 council in setting standards and good faith efforts.

9 (3) Nothing in this section reduces the amount of local sales and
10 use taxes to be repaid under section 6 of this act. The recipient
11 must repay all local sales and use taxes due under chapters 82.08,
12 82.12, 82.14, and 81.104 RCW as provided in section 6 of this act.

13 NEW SECTION. **Sec. 8.** (1) Each recipient of a deferral of taxes
14 granted under this chapter must file a complete annual tax
15 performance report with the department under RCW 82.32.534. Reports
16 must be filed for the first calendar year after the eligible
17 investment project is operationally complete and continue through the
18 end of the calendar year in which the final repayment occurs. If the
19 economic benefits of the deferral are passed to a lessee, as provided
20 in section 2 of this act, the lessee must file a complete annual tax
21 performance report and the applicant is not required to file a
22 complete annual tax performance report.

23 (2) If the eligible investment project is not operationally
24 complete within five calendar years from the issuance of the tax
25 deferral certificate, or if, on the basis of the tax performance
26 report under RCW 82.32.534 or other information, the department finds
27 that an eligible investment project is used for purposes other than
28 those listed in section 1(2) of this act at any time during the
29 calendar year in which the investment is certified by the department
30 as having been operationally completed, or at any time during any of
31 the repayment period, a portion of deferred taxes is immediately due
32 according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1.....	100
2.....	100
3.....	100

1	4.....	90
2	5.....	80
3	6.....	70
4	7.....	60
5	8.....	50
6	9.....	40
7	10.....	30
8	11.....	20
9	12.....	10

10 (3) If the economic benefits of a tax deferral under this chapter
11 are passed to a lessee as provided in section 2 of this act, the
12 lessee is responsible for payment to the extent the lessee has
13 received the economic benefit.

14 NEW SECTION. **Sec. 9.** To the extent not inconsistent with the
15 provisions of this chapter, chapter 82.32 RCW applies to the
16 administration of this chapter.

17 NEW SECTION. **Sec. 10.** RCW 82.32.805 does not apply to this act.

18 NEW SECTION. **Sec. 11.** (1) This section is the tax preference
19 performance statement for the tax preference contained in
20 chapter . . ., Laws of 2022 (this act). This performance statement is
21 only intended to be used for subsequent evaluation of the tax
22 preference. It is not intended to create a private right of action by
23 any party or to be used to determine eligibility for preferential tax
24 treatment.

25 (2) The legislature categorizes this tax preference as one
26 intended to induce certain designated behavior by taxpayers, improve
27 industry competitiveness, and create jobs.

28 (3) It is the legislature's specific public policy objective to
29 build manufacturing capacity for carbon-free electricity and to
30 financially incentivize the use of high labor standards.

31 (4) (a) To measure the effectiveness of the tax preference in this
32 act, the joint legislative audit and review committee must evaluate
33 at least the first five years of available data, reporting its

1 findings to the legislature by December 31, 2028. The review must
2 include evaluation of:

3 (i) The average construction wages for eligible projects;
4 (ii) The number of jobs created in the clean technology sector;
5 (iii) The use of apprenticeship programs, and women, minority, or
6 veteran-owned businesses by eligible projects;

7 (iv) The degree to which the preference encouraged manufacturing
8 and component production for technologies that reduce greenhouse gas
9 emissions;

10 (v) Whether facilities benefiting from the preference would have
11 been developed without the preference; and

12 (vi) Any other relevant metric.

13 (b) The legislature does not intend to change the expiration of
14 the preference based on the findings of the review.

15 (5) In order to obtain the data necessary to perform the review
16 in subsection (4) of this section, the joint legislative audit and
17 review committee may refer to any data collected by the state.

18 NEW SECTION. **Sec. 12.** Sections 1 through 11 and 13 of this act
19 constitute a new chapter in Title 82 RCW.

20 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2022.

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