

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5901

67th Legislature
2022 Regular Session

Passed by the Senate March 10, 2022
Yeas 36 Nays 12

President of the Senate

Passed by the House March 9, 2022
Yeas 69 Nays 28

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5901** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 The legislature declares that this limited program serves the vital
2 public purpose of creating employment opportunities and generally
3 spurring economic development in these counties of the state.

4 (2) The legislature also finds that this act is consistent with
5 the Substitute House Bill No. 1170, the Washington BEST manufacturing
6 act, enacted in 2021. The 2021 Washington BEST manufacturing act
7 recognized that the state must retain and build on its leadership in
8 the manufacturing and research and development sectors and also
9 recognized that a thriving manufacturing and research sector are
10 complimentary and should be promoted in every region of the state.
11 Therefore, the legislature further finds the sales and use tax
12 deferral program for manufacturing and research and development in
13 this act is a critical tool and strategy to help achieve the goals
14 expressed in the Washington BEST manufacturing act of doubling the
15 state's manufacturing employment base, the number of small
16 businesses, and the number of women and minority-owned manufacturing
17 businesses in the next 10 years.

18 NEW SECTION. **Sec. 102.** Unless the context clearly requires
19 otherwise, the definitions in this section apply throughout this
20 chapter.

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

23 (2) "Department" means the department of revenue.

24 (3) "Eligible area" means a qualifying county.

25 (4)(a) "Eligible investment project" means an investment project
26 that is located, as of the date the application required by section
27 103 of this act is received by the department, in an eligible area as
28 defined in subsection (3) of this section.

29 (b) "Eligible investment project" does not include any portion of
30 an investment project undertaken by a light and power business as
31 defined in RCW 82.16.010(4), other than that portion of a
32 cogeneration project that is used to generate power for consumption
33 within the manufacturing site of which the cogeneration project is an
34 integral part, or investment projects that have already received
35 deferrals under this chapter.

36 (5)(a) "Initiation of construction" means the date that a
37 building permit is issued under the building code adopted under RCW
38 19.27.031 for:

1 (i) Construction of the qualified building, if the underlying
2 ownership of the building vests exclusively with the person receiving
3 the economic benefit of the deferral;

4 (ii) Construction of the qualified building, if the economic
5 benefits of the deferral are passed to a lessee as provided in RCW
6 82.60.025; or

7 (iii) Tenant improvements for a qualified building, if the
8 economic benefits of the deferral are passed to a lessee as provided
9 in RCW 82.60.025.

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

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

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

20 (7) "Manufacturing" means the same as defined in RCW 82.04.120.
21 "Manufacturing" also includes:

22 (a) The activities performed by research and development
23 laboratories and commercial testing laboratories; and

24 (b) The conditioning of vegetable seeds.

25 (8) "Meaningful construction" means an active construction site,
26 where excavation of a building site, laying of a building foundation,
27 or other tangible signs of construction are taking place and that
28 clearly show a progression in the construction process at the
29 location designated by the taxpayer in the application for deferral.
30 Planning, permitting, or land clearing before excavation of the
31 building site, without more, does not constitute "meaningful
32 construction."

33 (9) "Person" has the meaning given in RCW 82.04.030.

34 (10) "Qualified buildings" means construction of new structures,
35 and expansion or renovation of existing structures for the purpose of
36 increasing floor space or production capacity used for manufacturing
37 or research and development activities, including plant offices and
38 warehouses or other facilities for the storage of raw material or
39 finished goods if such facilities are an essential or an integral
40 part of a factory, mill, plant, or laboratory used for manufacturing

1 or research and development. If a building is used partly for
2 manufacturing or research and development and partly for other
3 purposes, the applicable tax deferral must be determined by
4 apportionment of the costs of construction under rules adopted by the
5 department.

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

14 (12) "Qualifying county" means a county that has a population
15 less than 650,000 at the time an application is submitted under
16 section 103 of this act.

17 (13) "Recipient" means a person receiving a tax deferral under
18 this chapter.

19 (14) "Research and development" means the development,
20 refinement, testing, marketing, and commercialization of a product,
21 service, or process before commercial sales have begun, but only when
22 such activities are intended to ultimately result in the production
23 of a new, different, or useful substance or article of tangible
24 personal property for sale. As used in this subsection, "commercial
25 sales" excludes sales of prototypes or sales for market testing if
26 the total gross receipts from such sales of the product, service, or
27 process do not exceed \$1,000,000.

28 NEW SECTION. **Sec. 103.** (1) Application for deferral of taxes
29 under this chapter must be made before initiation of the construction
30 of the investment project or acquisition of equipment or machinery.
31 The application must be made to the department in a form and manner
32 prescribed by the department. The application must contain
33 information regarding the location of the investment project, the
34 applicant's average employment in the state for the prior year,
35 estimated or actual new employment related to the project, estimated
36 or actual wages of employees related to the project, estimated or
37 actual costs, time schedules for completion and operation, and other
38 information required by the department. The department must rule on
39 the application within 60 days.

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

3 (3) This section expires July 1, 2032.

4 NEW SECTION. **Sec. 104.** (1) The department must issue a sales
5 and use tax deferral certificate for state and local sales and use
6 taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
7 investment project.

8 (2) The department must keep a running total of all deferrals
9 granted under this chapter during each fiscal biennium. The amount of
10 state and local sales and use taxes eligible for deferral under this
11 chapter is limited to \$400,000 per person.

12 (3) This section expires July 1, 2032.

13 NEW SECTION. **Sec. 105.** (1) The recipient of a deferral
14 certificate under section 104 of this act must begin meaningful
15 construction on an eligible investment project within two years of
16 receiving a deferral certificate, unless construction was delayed due
17 to circumstances beyond the recipient's control. Lack of funding is
18 not considered a circumstance beyond the recipient's control.

19 (2) If the recipient does not begin meaningful construction on an
20 eligible investment project within two years of receiving a deferral
21 certificate, the deferral certificate issued under section 104 of
22 this act is invalid and taxes deferred under this chapter are due
23 immediately.

24 NEW SECTION. **Sec. 106.** (1)(a) Each recipient of a deferral of
25 taxes granted under this chapter must file a complete annual tax
26 performance report with the department under RCW 82.32.534 during the
27 period covered by the schedule under subsection (2) of this section.
28 If the economic benefits of the deferral are passed to a lessee as
29 provided in section 108 of this act, the lessee must file a complete
30 annual tax performance report, and the applicant is not required to
31 file a complete annual tax performance report.

32 (b) The joint legislative audit and review committee, as part of
33 its tax preference review process under chapter 43.136 RCW, must use
34 the information reported on the annual tax performance report
35 required by this section to study the tax deferral program authorized
36 under this chapter. The committee must report to the legislature by
37 December 1, 2030. The report must measure the effect of the program

1 on job creation, the number of jobs created for residents of eligible
2 areas, company growth, and such other factors as the committee
3 selects.

4 (2)(a) Except as otherwise provided in this chapter, taxes
5 deferred under this chapter need not be repaid.

6 (b) If the investment project is not operationally complete
7 within five calendar years from the issuance of the tax deferral
8 certificate, or if, on the basis of the tax performance report under
9 RCW 82.32.534 or other information, the department finds that an
10 investment project is used for purposes other than a qualified
11 manufacturing or research and development operation at any time
12 during the calendar year in which the investment project is certified
13 by the department as having been operationally completed, or at any
14 time during any of the seven succeeding calendar years, a portion of
15 deferred taxes is immediately due according to the following
16 schedule:

17	Year in which	% of deferred taxes due
18	use occurs	
19	1	100%
20	2	87.5%
21	3	75%
22	4	62.5%
23	5	50%
24	6	37.5%
25	7	25%
26	8	12.5%

27 (c) If the economic benefits of the deferral are passed to a
28 lessee as provided in section 108 of this act, the lessee is
29 responsible for payment to the extent the lessee has received the
30 economic benefit.

31 (3) A recipient who must repay deferred taxes under this section
32 because the department has found that an investment project is not
33 eligible for tax deferral under this chapter is no longer required to
34 file annual tax performance reports under RCW 82.32.534 beginning on
35 the date an investment project is used for nonqualifying purposes.

36 (4) The department must assess interest at the rate provided for
37 delinquent taxes, but not penalties, retroactively to the date of

1 deferral for a recipient who must repay deferred taxes under this
2 section because the department has found that an investment project
3 is not eligible for tax deferral. The debt for deferred taxes will
4 not be extinguished by insolvency or other failure of the recipient.
5 Transfer of ownership does not terminate the deferral. The deferral
6 is transferred, subject to the successor meeting the eligibility
7 requirements of this chapter, for the remaining periods of the
8 deferral.

9 (5) Notwithstanding any other provision of this section or RCW
10 82.32.534, deferred taxes on the following need not be repaid:

11 (a) Machinery and equipment, and sales of or charges made for
12 labor and services, which at the time of purchase would have
13 qualified for exemption under RCW 82.08.02565; and

14 (b) Machinery and equipment which at the time of first use would
15 have qualified for exemption under RCW 82.12.02565.

16 NEW SECTION. **Sec. 107.** The department must establish a list of
17 qualifying counties, effective July 1, 2022. The list of qualifying
18 counties is effective for a 24-month period and must be updated by
19 July 1st of the year that is two calendar years after the list was
20 established or last updated, as the case may be.

21 NEW SECTION. **Sec. 108.** The lessor or owner of a qualified
22 building is not eligible for a deferral unless:

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

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

27 (b) The lessee that receives the economic benefit of the deferral
28 agrees in writing with the department to complete the annual tax
29 performance report required under section 106 of this act; and

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

35 NEW SECTION. **Sec. 109.** Chapter 82.32 RCW applies to the
36 administration of this chapter.

1 (d) "Distribution center" means a warehouse that is used
2 exclusively by a retailer solely for the storage and distribution of
3 finished goods to retail outlets of the retailer. "Distribution
4 center" does not include a warehouse at which retail sales occur;

5 (e) "Finished goods" means tangible personal property intended
6 for sale by a retailer or wholesaler. "Finished goods" does not
7 include:

8 (i) Agricultural products stored by wholesalers, third-party
9 warehouses, or retailers if the storage takes place on the land of
10 the person who produced the agricultural product;

11 (ii) Logs, minerals, petroleum, gas, or other extracted products
12 stored as raw materials or in bulk; or

13 (iii) Marijuana, useable marijuana, or marijuana-infused
14 products;

15 (f) "Grain elevator" means a structure used for storage and
16 handling of grain in bulk;

17 (g) "Material-handling equipment and racking equipment" means
18 equipment in a warehouse or grain elevator that is primarily used to
19 handle, store, organize, convey, package, or repackage finished
20 goods. The term includes tangible personal property with a useful
21 life of one year or more that becomes an ingredient or component of
22 the equipment, including repair and replacement parts. The term does
23 not include equipment in offices, lunchrooms, restrooms, and other
24 like space, within a warehouse or grain elevator, or equipment used
25 for nonwarehousing purposes. "Material-handling equipment" includes
26 but is not limited to: Conveyers, carousels, lifts, positioners,
27 pick-up-and-place units, cranes, hoists, mechanical arms, and robots;
28 mechanized systems, including containers that are an integral part of
29 the system, whose purpose is to lift or move tangible personal
30 property; and automated handling, storage, and retrieval systems,
31 including computers that control them, whose purpose is to lift or
32 move tangible personal property; and forklifts and other off-the-road
33 vehicles that are used to lift or move tangible personal property and
34 that cannot be operated legally on roads and streets. "Racking
35 equipment" includes, but is not limited to, conveying systems,
36 chutes, shelves, racks, bins, drawers, pallets, and other containers
37 and storage devices that form a necessary part of the storage system;

38 (h) "Person" has the meaning given in RCW 82.04.030;

39 (i) "Retailer" means a person who makes "sales at retail" as
40 defined in chapter 82.04 RCW of tangible personal property;

1 (j) "Square footage" means the product of the two horizontal
2 dimensions of each floor of a specific warehouse. The entire
3 footprint of the warehouse must be measured in calculating the square
4 footage, including space that juts out from the building profile such
5 as loading docks. "Square footage" does not mean the aggregate of the
6 square footage of more than one warehouse at a location or the
7 aggregate of the square footage of warehouses at more than one
8 location;

9 (k) "Third-party warehouser" means a person taxable under RCW
10 82.04.280(1)(d);

11 (l) "Qualifying county" means a county that has a population less
12 than 650,000 at the time an application is submitted under this
13 section and RCW 82.12.820;

14 (m) "Warehouse" means an enclosed building or structure in which
15 finished goods are stored. A warehouse building or structure may have
16 more than one storage room and more than one floor. Office space,
17 lunchrooms, restrooms, and other space within the warehouse and
18 necessary for the operation of the warehouse are considered part of
19 the warehouse as are loading docks and other such space attached to
20 the building and used for handling of finished goods. Landscaping and
21 parking lots are not considered part of the warehouse. A storage yard
22 is not a warehouse, nor is a building in which manufacturing takes
23 place; and

24 (~~(m)~~) (n) "Wholesaler" means a person who makes "sales at
25 wholesale" as defined in chapter 82.04 RCW of tangible personal
26 property, but "wholesaler" does not include a person who makes sales
27 exempt under RCW 82.04.330.

28 (3)(a) A person claiming an exemption from state tax in the form
29 of a remittance under this section must pay the tax imposed by RCW
30 82.08.020. The buyer may then apply to the department for remittance
31 of all or part of the tax paid under RCW 82.08.020. For grain
32 elevators with bushel capacity of one million but less than two
33 million, the remittance is equal to fifty percent of the amount of
34 tax paid. (~~(F)~~) Except as provided under (d) of this subsection,
35 for warehouses with square footage of two hundred thousand or more
36 and for grain elevators with bushel capacity of two million or more,
37 the remittance is equal to one hundred percent of the amount of tax
38 paid for qualifying construction, materials, service, and labor, and
39 fifty percent of the amount of tax paid for qualifying material-
40 handling equipment and racking equipment, and labor and services

1 rendered in respect to installing, repairing, cleaning, altering, or
2 improving the equipment. The maximum amount of tax that may be
3 remitted under this section and RCW 82.12.820 for the construction or
4 expansion of a warehouse or grain elevator is \$400,000.

5 (b) The department must determine eligibility under this section
6 based on information provided by the buyer and through audit and
7 other administrative records. The buyer must on a quarterly basis
8 submit an information sheet, in a form and manner as required by the
9 department by rule, specifying the amount of exempted tax claimed and
10 the qualifying purchases or acquisitions for which the exemption is
11 claimed. The buyer must retain, in adequate detail to enable the
12 department to determine whether the equipment or construction meets
13 the criteria under this section: Invoices; proof of tax paid;
14 documents describing the material-handling equipment and racking
15 equipment; location and size of warehouses and grain elevators; and
16 construction invoices and documents.

17 (c) The department must on a quarterly basis remit exempted
18 amounts to qualifying persons who submitted applications during the
19 previous quarter.

20 (d) For warehouses located in a qualifying county, the square
21 footage requirement is 100,000 square feet or more.

22 (4) Warehouses, grain elevators, and material-handling equipment
23 and racking equipment for which an exemption, credit, or deferral has
24 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
25 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
26 under this section. Warehouses and grain elevators upon which
27 construction was initiated before May 20, 1997, are not eligible for
28 a remittance under this section.

29 (5) The lessor or owner of a warehouse or grain elevator is not
30 eligible for a remittance under this section unless the underlying
31 ownership of the warehouse or grain elevator and the material-
32 handling equipment and racking equipment vests exclusively in the
33 same person, or unless the lessor by written contract agrees to pass
34 the economic benefit of the remittance to the lessee in the form of
35 reduced rent payments.

36 (6) This section expires July 1, 2032.

37 **Sec. 202.** RCW 82.12.820 and 2006 c 354 s 13 are each amended to
38 read as follows:

1 (1) Wholesalers or third-party warehouseurs who own or operate
2 warehouses or grain elevators, and retailers who own or operate
3 distribution centers, and who have paid the tax levied under RCW
4 82.12.020 on:

5 (a) Material-handling equipment and racking equipment and labor
6 and services rendered in respect to installing, repairing, cleaning,
7 altering, or improving the equipment; or

8 (b) Materials incorporated in the construction of a warehouse or
9 grain elevator, are eligible for an exemption on tax paid in the form
10 of a remittance or credit against tax owed. The amount of the
11 remittance or credit is computed under subsection (2) of this section
12 and is based on the state share of use tax.

13 (2)(a) A person claiming an exemption from state tax in the form
14 of a remittance under this section must pay the tax imposed by RCW
15 82.12.020 to the department. The person may then apply to the
16 department for remittance of all or part of the tax paid under RCW
17 82.12.020. For grain elevators with bushel capacity of one million
18 but less than two million, the remittance is equal to fifty percent
19 of the amount of tax paid. ~~((For))~~ Except as provided under (d) of
20 this subsection, for warehouses with square footage of two hundred
21 thousand or more and for grain elevators with bushel capacity of two
22 million or more, the remittance is equal to one hundred percent of
23 the amount of tax paid for qualifying construction materials, and
24 fifty percent of the amount of tax paid for qualifying material-
25 handling equipment and racking equipment. The maximum amount of tax
26 that may be remitted under this section and RCW 82.08.820 for the
27 construction or expansion of a warehouse or grain elevator is
28 \$400,000.

29 (b) The department shall determine eligibility under this section
30 based on information provided by the buyer and through audit and
31 other administrative records. The buyer shall on a quarterly basis
32 submit an information sheet, in a form and manner as required by the
33 department by rule, specifying the amount of exempted tax claimed and
34 the qualifying purchases or acquisitions for which the exemption is
35 claimed. The buyer shall retain, in adequate detail to enable the
36 department to determine whether the equipment or construction meets
37 the criteria under this section: Invoices; proof of tax paid;
38 documents describing the material-handling equipment and racking
39 equipment; location and size of warehouses, if applicable; and
40 construction invoices and documents.

1 (c) The department shall on a quarterly basis remit or credit
2 exempted amounts to qualifying persons who submitted applications
3 during the previous quarter.

4 (d) For warehouses located in a qualifying county, the square
5 footage requirement is 100,000 square feet or more.

6 (3) Warehouse, grain elevators, and material-handling equipment
7 and racking equipment for which an exemption, credit, or deferral has
8 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
9 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
10 under this section. Materials incorporated in warehouses and grain
11 elevators upon which construction was initiated prior to May 20,
12 1997, are not eligible for a remittance under this section.

13 (4) The lessor or owner of the warehouse or grain elevator is not
14 eligible for a remittance or credit under this section unless the
15 underlying ownership of the warehouse or grain elevator and material-
16 handling equipment and racking equipment vests exclusively in the
17 same person, or unless the lessor by written contract agrees to pass
18 the economic benefit of the exemption to the lessee in the form of
19 reduced rent payments.

20 (5) The definitions in RCW 82.08.820 apply to this section.

21 (6) This section expires July 1, 2032.

22 NEW SECTION. Sec. 203. A person claiming an exemption from
23 state tax in the form of a remittance under RCW 82.08.820 or
24 82.12.820 for a warehouse or distribution center must file the annual
25 tax preference performance report under RCW 82.32.534 beginning in
26 the first calendar year following the year the warehouse,
27 distribution center, or grain elevator is operationally complete and
28 for the next two subsequent years.

29 NEW SECTION. Sec. 204. (1) This section is the tax preference
30 performance statement for the warehousing, distribution, and grain
31 elevator sales and use tax exemptions in sections 201 and 202,
32 chapter . . . , Laws of 2022 (sections 201 and 202 of this act). The
33 performance statement is only intended to be used for subsequent
34 evaluation of the tax preference. It is not intended to create a
35 private right of action by any party or be used to determine
36 eligibility for preferential tax treatment.

37 (2) The legislature categorizes this tax preference as one
38 intended to accomplish the general purposes indicated in RCW

1 82.32.808(2) (a) and (c) to induce certain designated behavior by
2 businesses and to create jobs.

3 (3) It is the legislature's specific public policy objective to
4 induce the construction of new or expanded warehouses and
5 distribution centers in certain targeted counties by reducing the
6 square footage requirement in order to diversify the tax base and
7 increase employment within the targeted counties.

8 (4) To measure the effectiveness of these exemptions in achieving
9 the specific public policy objectives described in subsection (3) of
10 this section, the joint legislative audit and review committee must
11 evaluate the changes in the number of employment positions in the
12 warehousing and distribution industry sector in the targeted counties
13 and changes to the tax base as a result of increased warehousing and
14 distribution activity.

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 the remittance data prepared by the
18 department of revenue and the annual tax preference performance
19 report submitted by the beneficiary of the tax preference under RCW
20 82.32.534.

21 NEW SECTION. **Sec. 205.** Sections 101 through 110 of this act
22 constitute a new chapter in Title 82 RCW.

23 NEW SECTION. **Sec. 206.** This act takes effect July 1, 2022.

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