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**SUBSTITUTE SENATE BILL 6239**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Zarelli, Benton, Carlson, Hale, McAuliffe, Prentice, Rasmussen, Murray, Haugen and Poulsen; by request of Governor Locke)

READ FIRST TIME 01/23/04.

1       AN ACT Relating to high technology and research and development tax  
2 incentives; amending RCW 82.04.4452, 82.63.010, 82.63.020, 82.63.030,  
3 82.63.045, and 82.63.070; adding new sections to chapter 82.04 RCW;  
4 creating a new section; providing an effective date; and providing  
5 expiration dates.

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

7       NEW SECTION. **Sec. 1.** The legislature finds that recruiting and  
8 retaining high technology companies is a critical component of creating  
9 a strong economy for Washington's future. This strong economy is vital  
10 to provide the public and private resources to support a diverse array  
11 of essential government and social services. The legislature also  
12 finds that numerous states and countries are using an extensive series  
13 of economic incentives to compete for these same high technology  
14 companies and the high-wage direct and indirect jobs they create.

15       The legislature also finds that high technology companies of all  
16 sizes must continue to invest in research and development to discover  
17 new ideas that lead to new products and processes that significantly  
18 improve the quality of life of all citizens of Washington state. The  
19 legislature finds that the business and occupations tax credit is

1 intended to promote investment in initial research and development by  
2 high technology companies to explore new ideas. The legislature  
3 further finds that the sales tax deferral and exemption is intended to  
4 promote investment in the capital facilities that house the people and  
5 equipment necessary to further evaluation of these new ideas.

6 The legislature finds that the business and occupation tax credit  
7 for investment in research and development and a sales tax deferral and  
8 exemption for investment in capital facilities to conduct research and  
9 development are designed to work together to encourage new ideas and  
10 transform them into products and processes. Therefore, the legislature  
11 directs that these incentives shall be evaluated together to determine  
12 their joint ability to create direct, indirect, and induced economic  
13 benefits for the people of the state of Washington.

14 **Sec. 2.** RCW 82.04.4452 and 2000 c 103 s 7 are each amended to read  
15 as follows:

16 (1) In computing the tax imposed under this chapter, a credit is  
17 allowed for each person whose research and development spending during  
18 the year in which the credit is claimed exceeds 0.92 percent of the  
19 person's taxable amount during the same calendar year.

20 (2) The credit is equal to the greater of the amount of qualified  
21 research and development expenditures of a person or eighty percent of  
22 amounts received by a person other than a public educational or  
23 research institution in compensation for the conduct of qualified  
24 research and development, multiplied by the rate provided in RCW  
25 82.04.260(3) in the case of a nonprofit corporation or nonprofit  
26 association engaging within this state in research and development, and  
27 the rate provided in RCW 82.04.290(2) for every other person.

28 (3) Any person entitled to the credit provided in subsection (2) of  
29 this section as a result of qualified research and development  
30 conducted under contract may assign all or any portion of the credit to  
31 the person contracting for the performance of the qualified research  
32 and development.

33 (4) The credit, including any credit assigned to a person under  
34 subsection (3) of this section, shall be taken against taxes due for  
35 the same calendar year in which the qualified research and development  
36 expenditures are incurred. The credit, including any credit assigned

1 to a person under subsection (3) of this section, for each calendar  
2 year shall not exceed the lesser of two million dollars or the amount  
3 of tax otherwise due under this chapter for the calendar year.

4 (5) Any person taking the credit, including any credit assigned to  
5 a person under subsection (3) of this section, whose research and  
6 development spending during the calendar year in which the credit is  
7 claimed fails to exceed 0.92 percent of the person's taxable amount  
8 during the same calendar year shall be liable for payment of the  
9 additional taxes represented by the amount of credit taken together  
10 with interest, but not penalties. Interest shall be due at the rate  
11 provided for delinquent excise taxes retroactively to the date the  
12 credit was taken until the taxes are paid. Any credit assigned to a  
13 person under subsection (3) of this section that is disallowed as a  
14 result of this section may be taken by the person who performed the  
15 qualified research and development subject to the limitations set forth  
16 in subsection (4) of this section.

17 (6) Any person claiming the credit, and any person assigning a  
18 credit as provided in subsection (3) of this section, shall file an  
19 affidavit form prescribed by the department which shall include the  
20 amount of the credit claimed, ~~((an estimate of))~~ the ~~((anticipated))~~  
21 qualified research and development expenditures during the calendar  
22 year for which the credit is claimed, ~~((an estimate of))~~ and the  
23 taxable amount during the calendar year for which the credit is  
24 claimed, and such additional information as the department may  
25 prescribe. The report is due by March 31st following any year a credit  
26 is taken.

27 (7)(a) A person claiming the credit shall agree to supply the  
28 department with information ~~((necessary to measure the results of the~~  
29 ~~tax credit program for qualified research and development~~  
30 ~~expenditures))~~ on research and development spending, and product  
31 development, which may be measured by a proxy such as research  
32 projects, copyrights, trademarks, or patents issued. The survey  
33 information is deemed tax information under RCW 82.32.330.

34 (b) If a person fails to provide the information required under  
35 this subsection by the due date, the person entitled to the credit  
36 provided in subsection (2) of this section is not eligible to take or  
37 assign the credit provided in subsection (2) of this section in the  
38 year the person failed to complete the survey.

1           (8) The (~~department~~) joint legislative audit and review committee  
2 shall use the information (~~required under~~) from subsection (7) of  
3 this section and from other state agency sources to (~~perform three~~  
4 ~~assessments on~~) study the tax credit program authorized under this  
5 section. (~~The assessments will take place in 1997, 2000, and 2003.~~  
6 ~~The department shall prepare reports on each assessment and deliver~~  
7 ~~their reports by September 1, 1997, September 1, 2000, and September 1,~~  
8 ~~2003. The assessments~~) The committee shall report to the legislature  
9 by December 1, 2013. The study shall measure the effect of the program  
10 on (~~job creation, the number of jobs created for Washington~~  
11 ~~residents,~~) company growth, the introduction of new products as  
12 measured by copyrights, trademarks, and overall patent issuance, the  
13 diversification of the state's economy, growth in research and  
14 development investment, and the movement of firms or the consolidation  
15 of firms' operations into the state(~~, and such other factors as the~~  
16 ~~department selects~~). In conducting this evaluation, the committee  
17 shall:

18           (a) Use a generally accepted econometric model and contract with  
19 outside experts; and

20           (b) Evaluate the direct, indirect, and induced impacts of this  
21 program together with the program authorized under RCW 82.63.020.

22           (9) For the purpose of this section:

23           (a) "Qualified research and development expenditures" means  
24 operating expenses, including wages, compensation of a proprietor or a  
25 partner in a partnership as determined under rules adopted by the  
26 department, benefits, supplies, and computer expenses, directly  
27 incurred in qualified research and development by a person claiming the  
28 credit provided in this section. The term does not include amounts  
29 paid to a person other than a public educational or research  
30 institution to conduct qualified research and development. Nor does  
31 the term include capital costs and overhead, such as expenses for land,  
32 structures, or depreciable property.

33           (b) "Qualified research and development" shall have the same  
34 meaning as in RCW 82.63.010.

35           (c) "Research and development spending" means qualified research  
36 and development expenditures plus eighty percent of amounts paid to a  
37 person other than a public educational or research institution to  
38 conduct qualified research and development.

1 (d) "Taxable amount" means the taxable amount subject to the tax  
2 imposed in this chapter required to be reported on the person's  
3 combined excise tax returns during the year in which the credit is  
4 claimed, less any taxable amount for which a credit is allowed under  
5 RCW 82.04.440.

6 (10) This section expires (~~December 31, 2004~~) January 1, 2015.

7 **Sec. 3.** RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended  
8 to read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Advanced computing" means technologies used in the designing  
12 and developing of computing hardware and software, including  
13 innovations in designing the full spectrum of hardware from hand-held  
14 calculators to super computers, and peripheral equipment.

15 (2) "Advanced materials" means materials with engineered properties  
16 created through the development of specialized processing and synthesis  
17 technology, including ceramics, high value-added metals, electronic  
18 materials, composites, polymers, and biomaterials.

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

21 (4) "Biotechnology" means the application of technologies, such as  
22 recombinant DNA techniques, biochemistry, molecular and cellular  
23 biology, genetics and genetic engineering, cell fusion techniques, and  
24 new bioprocesses, using living organisms, or parts of organisms, to  
25 produce or modify products, to improve plants or animals, to develop  
26 microorganisms for specific uses, to identify targets for small  
27 molecule pharmaceutical development, or to transform biological systems  
28 into useful processes and products or to develop microorganisms for  
29 specific uses.

30 (5) "Department" means the department of revenue.

31 (6) "Electronic device technology" means technologies involving  
32 microelectronics; semiconductors; electronic equipment and  
33 instrumentation; radio frequency, microwave, and millimeter  
34 electronics; optical and optic-electrical devices; and data and digital  
35 communications and imaging devices.

36 (7) "Eligible investment project" means an investment project which  
37 either initiates a new operation, or expands or diversifies a current

1 operation by expanding, renovating, or equipping an existing facility.  
2 The lessor or owner of the qualified building is not eligible for a  
3 deferral unless (a) the underlying ownership of the buildings,  
4 machinery, and equipment vests exclusively in the same person~~((, or~~  
5 ~~unless))~~; or (b)(i) the lessor by written contract agrees to pass the  
6 economic benefit of the deferral to the lessee in the form of reduced  
7 rent payments, and (ii) the lessee that receives the economic benefit  
8 of the deferral agrees in writing with the department to complete the  
9 annual survey required under RCW 82.63.020(2). The economic benefit of  
10 the deferral to the lessee may be evidenced by any type of payment,  
11 credit, or any other financial arrangement between the lessor or owner  
12 of the qualified building and the lessee.

13 (8) "Environmental technology" means assessment and prevention of  
14 threats or damage to human health or the environment, environmental  
15 cleanup, and the development of alternative energy sources.

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

20 (10) "Person" has the meaning given in RCW 82.04.030.

21 (11) "Pilot scale manufacturing" means design, construction, and  
22 testing of preproduction prototypes and models in the fields of  
23 biotechnology, advanced computing, electronic device technology,  
24 advanced materials, and environmental technology other than for  
25 commercial sale. As used in this subsection, "commercial sale"  
26 excludes sales of prototypes or sales for market testing if the total  
27 gross receipts from such sales of the product, service, or process do  
28 not exceed one million dollars.

29 (12) "Qualified buildings" means construction of new structures,  
30 and expansion or renovation of existing structures for the purpose of  
31 increasing floor space or production capacity used for pilot scale  
32 manufacturing or qualified research and development, including plant  
33 offices and other facilities that are an essential or an integral part  
34 of a structure used for pilot scale manufacturing or qualified research  
35 and development. If a building is used partly for pilot scale  
36 manufacturing or qualified research and development, and partly for  
37 other purposes, the applicable tax deferral shall be determined by

1 apportionment of the costs of construction under rules adopted by the  
2 department.

3 (13) "Qualified machinery and equipment" means fixtures, equipment,  
4 and support facilities that are an integral and necessary part of a  
5 pilot scale manufacturing or qualified research and development  
6 operation. "Qualified machinery and equipment" includes: Computers;  
7 software; data processing equipment; laboratory equipment,  
8 instrumentation, and other devices used in a process of experimentation  
9 to develop a new or improved pilot model, plant process, product,  
10 formula, invention, or similar property; manufacturing components such  
11 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;  
12 vats, tanks, and fermenters; operating structures; and all other  
13 equipment used to control, monitor, or operate the machinery. For  
14 purposes of this chapter, qualified machinery and equipment must be  
15 either new to the taxing jurisdiction of the state or new to the  
16 certificate holder, except that used machinery and equipment may be  
17 treated as qualified machinery and equipment if the certificate holder  
18 either brings the machinery and equipment into Washington or makes a  
19 retail purchase of the machinery and equipment in Washington or  
20 elsewhere.

21 (14) "Qualified research and development" means research and  
22 development performed within this state in the fields of advanced  
23 computing, advanced materials, biotechnology, electronic device  
24 technology, and environmental technology.

25 (15) "Recipient" means a person receiving the economic benefit of  
26 a tax deferral under this chapter. If the economic benefit of the tax  
27 deferral is passed to a lessee as provided under subsection (7) of this  
28 section, then the lessee shall be the recipient.

29 (16) "Research and development" means activities performed to  
30 discover technological information, and technical and nonroutine  
31 activities concerned with translating technological information into  
32 new or improved products, processes, techniques, formulas, inventions,  
33 or software. The term includes exploration of a new use for an  
34 existing drug, device, or biological product if the new use requires  
35 separate licensing by the federal food and drug administration under  
36 chapter 21, C.F.R., as amended. The term does not include adaptation  
37 or duplication of existing products where the products are not  
38 substantially improved by application of the technology, nor does the

1 term include surveys and studies, social science and humanities  
2 research, market research or testing, quality control, sale promotion  
3 and service, computer software developed for internal use, and research  
4 in areas such as improved style, taste, and seasonal design.

5 (17) "Initiation of construction" means the date that a building  
6 permit is issued for (a) the construction of the qualified building, in  
7 the event the underlying ownership of the building vests exclusively  
8 with the person receiving the economic benefit of the deferral, or (b)  
9 tenant improvements for a qualified building, in the event the economic  
10 benefits of the deferral are passed through to a lessee as provided in  
11 subsection (7) of this section. The initiation of construction does  
12 not include soil testing, site clearing and grading, site preparation,  
13 or any other related activities that are initiated prior to the  
14 issuance of a building permit for the construction of the foundation of  
15 the building. If the investment project is a phased project, the term  
16 initiation of construction shall apply separately to each phase.

17 **Sec. 4.** RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended to  
18 read as follows:

19 (1) Application for deferral of taxes under this chapter must be  
20 made before initiation of construction of, or acquisition of equipment  
21 or machinery for the investment project. The application shall be made  
22 to the department in a form and manner prescribed by the department.  
23 The application shall contain information regarding the location of the  
24 investment project, the applicant's average employment in the state for  
25 the prior year, estimated or actual new employment related to the  
26 project, estimated or actual wages of employees related to the project,  
27 estimated or actual costs, time schedules for completion and operation,  
28 and other information required by the department. The department shall  
29 rule on the application within sixty days.

30 (2) Applicants for deferral of taxes under this chapter shall agree  
31 to ~~((supply))~~ complete an annual survey, supplying the department with  
32 nonproprietary information necessary to measure the results of the tax  
33 deferral program for high-technology research and development and pilot  
34 scale manufacturing facilities. The survey may include questions  
35 pertaining to job creation, job retention, the number of full-time  
36 equivalent positions created, overall industry wage levels, company  
37 growth, introduction of new products, growth in research and



1 development investment, and movement of firms or the consolidation of  
2 firms' operations into the state. The information is due by March 31st  
3 the year following the calendar year in which the applicant applied for  
4 the deferral and for the eight years after the investment project is  
5 certified by the department as having been operationally complete. The  
6 survey information is deemed tax information under RCW 82.32.330.

7 (3) The ((department)) joint legislative audit and review committee  
8 shall use the information and information available from state agency  
9 sources to ((perform three assessments on)) study the tax deferral  
10 program authorized under this chapter. ((The assessments will take  
11 place in 1997, 2000, and 2003.)) The ((department)) committee shall  
12 ((prepare reports on each assessment and deliver their reports by  
13 September 1, 1997, September 1, 2000, and September 1, 2003)) report to  
14 the legislature by December 1, 2013. The ((assessments)) report shall  
15 measure the effect of the program on job creation, the number of jobs  
16 created ((for Washington residents)), company growth, the introduction  
17 of new products as measured by trademarks, copyrights, or overall  
18 patent issuance, the diversification of the state's economy, growth in  
19 research and development investment, and the movement of firms or the  
20 consolidation of firms' operations into the state((, and such other  
21 factors as the department selects)). In conducting this evaluation,  
22 the committee shall:

23 (a) Use a generally accepted econometric model and contract with  
24 outside experts; and

25 (b) Evaluate the direct, indirect, and induced impacts of this  
26 program together with the program authorized under RCW 82.63.020.

27 **Sec. 5.** RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended to  
28 read as follows:

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

33 (2) No certificate may be issued for an investment project that has  
34 already received a deferral under chapter 82.60 or 82.61 RCW or this  
35 chapter, except that an investment project for qualified research and  
36 development that has already received a deferral may also receive an

1 additional deferral certificate for adapting the investment project for  
2 use in pilot scale manufacturing.

3 (3) This section shall expire (~~(July)~~) January 1, ((2004)) 2015.

4 **Sec. 6.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to read  
5 as follows:

6 (1) Except as provided in subsection (2) of this section, taxes  
7 deferred under this chapter need not be repaid.

8 (2)(a) If, on the basis of (~~(a-report)~~) survey under RCW 82.63.020  
9 or other information, the department finds that an investment project  
10 is used for purposes other than qualified research and development or  
11 pilot scale manufacturing at any time during the calendar year in which  
12 the investment project is certified by the department as having been  
13 operationally completed, or at any time during any of the seven  
14 succeeding calendar years, a portion of deferred taxes shall be  
15 immediately due according to the following schedule:

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

25 (b) If a recipient of the deferral fails to file the annual survey  
26 required under RCW 82.63.020 by the date due, 12.5 percent of the  
27 deferred tax shall be immediately due from the recipient.

28 (c) If an investment project is used for purposes other than  
29 qualified research and development or pilot scale manufacturing at any  
30 time during the calendar year in which the investment project is  
31 certified as having been operationally complete or the recipient of the  
32 deferral fails to complete the annual survey due under RCW 82.63.020,  
33 the portion of deferred taxes immediately due is the amount on the  
34 schedule in (a) of this subsection.

1       (3) The department shall assess interest at the rate provided for  
2 delinquent taxes, but not penalties, retroactively to the date of  
3 deferral. The debt for deferred taxes will not be extinguished by  
4 insolvency or other failure of the recipient. Transfer of ownership  
5 does not terminate the deferral. The deferral is transferred, subject  
6 to the successor meeting the eligibility requirements of this chapter,  
7 for the remaining periods of the deferral.

8       ~~((3))~~ (4) Notwithstanding subsection (2) of this section,  
9 deferred taxes on the following need not be repaid:

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

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

15       **Sec. 7.** RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended to  
16 read as follows:

17       Applications ~~((and other information))~~ received by the department  
18 under this chapter are not confidential and are subject to disclosure.

19       NEW SECTION. **Sec. 8.** A new section is added to chapter 82.04 RCW  
20 to read as follows:

21       This chapter does not apply to amounts received by any person for  
22 research and development under the federal small business innovation  
23 research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.).

24       NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW  
25 to read as follows:

26       This chapter does not apply to amounts received by any person for  
27 research and development under the federal small business technology  
28 transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.).

29       NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect  
30 July 1, 2004.

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