

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2640

59th Legislature
2006 Regular Session

Passed by the House February 10, 2006
Yeas 93 Nays 5

Speaker of the House of Representatives

Passed by the Senate March 8, 2006
Yeas 43 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2640** 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**

SUBSTITUTE HOUSE BILL 2640

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Finance (originally sponsored by Representatives B. Sullivan, McCoy, O'Brien, Haler, Sells, Morris, Ericks, Strow and Dunn)

READ FIRST TIME 2/7/06.

1 AN ACT Relating to biotechnology product and medical device
2 manufacturing tax incentives; amending RCW 82.32.600; adding a new
3 section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW;
4 providing an effective date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the state's
7 economy is increasingly dependent on the expansion of knowledge-based
8 sectors, including the life sciences. The legislature also finds that
9 commercial enterprises in the life sciences create high-wage,
10 high-skilled jobs that are part of the state's effort to encourage
11 economic diversification and stability. However, the legislature also
12 finds that commercial life sciences businesses, particularly in
13 biotechnology product and medical device manufacturing, incur
14 significant costs associated with capital infrastructure and job
15 training often years before a product is licensed for marketing or a
16 facility is licensed for manufacturing by governmental agencies in the
17 United States and abroad. The legislature also finds that current
18 state tax policy discourages the growth of these companies in two ways:
19 (1) Washington state's higher rate of taxation compared with other

1 states and nations encourages the export of intellectual property and
2 commercial operations out of Washington; and (2) taxing these
3 businesses before facilities, or products produced therein, are
4 licensed for marketing by regulatory agencies.

5 The legislature further finds that targeted tax incentives may
6 encourage the formation, expansion, and retention of commercial
7 operations within the life sciences sector. The legislature also finds
8 that tax incentives should be subject to the same rigorous requirements
9 for efficiency and accountability as are other expenditure programs,
10 and that tax incentives should therefore be focused to provide the
11 greatest possible return on the state's investment.

12 For these reasons, the legislature hereby establishes a tax
13 deferral program for commercial manufacturing facilities in this
14 sector. The legislature declares that these limited programs serve the
15 vital public purposes of incenting expenditures in commercial life
16 science operations and the development of employment opportunities in
17 this state. The legislature further declares its intent to create a
18 contract within the meaning of Article I, section 23 of the state
19 Constitution as to those businesses that make capital investments in
20 consideration of the tax deferral program established in this chapter.

21 NEW SECTION. **Sec. 2.** Unless the context clearly requires
22 otherwise, the definitions in this section apply throughout this
23 chapter.

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

26 (2) "Biotechnology" means a technology based on the science of
27 biology, microbiology, molecular biology, cellular biology,
28 biochemistry, or biophysics, or any combination of these, and includes,
29 but is not limited to, recombinant DNA techniques, genetics and genetic
30 engineering, cell fusion techniques, and new bioprocesses, using living
31 organisms, or parts of organisms.

32 (3) "Biotechnology product" means any virus, therapeutic serum,
33 antibody, protein, toxin, antitoxin, vaccine, blood, blood component or
34 derivative, allergenic product, or analogous product produced through
35 the application of biotechnology that is used in the prevention,
36 treatment, or cure of diseases or injuries to humans.

37 (4) "Department" means the department of revenue.

1 (5)(a) "Eligible investment project" means an investment in
2 qualified buildings or qualified machinery and equipment, including
3 labor and services rendered in the planning, installation, and
4 construction of the project.

5 (b) The lessor or owner of a qualified building is not eligible for
6 a deferral unless:

7 (i) The underlying ownership of the buildings, machinery, and
8 equipment vests exclusively in the same person; or

9 (ii)(A) The lessor by written contract agrees to pass the economic
10 benefit of the deferral to the lessee;

11 (B) The lessee that receives the economic benefit of the deferral
12 agrees in writing with the department to complete the annual survey
13 required under section 8 of this act; and

14 (C) The economic benefit of the deferral passed to the lessee is no
15 less than the amount of tax deferred by the lessor and is evidenced by
16 written documentation of any type of payment, credit, or other
17 financial arrangement between the lessor or owner of the qualified
18 building and the lessee.

19 (6)(a) "Initiation of construction" means the date that a building
20 permit is issued under the building code adopted under RCW 19.27.031
21 for:

22 (i) Construction of the qualified building, if the underlying
23 ownership of the building vests exclusively with the person receiving
24 the economic benefit of the deferral;

25 (ii) Construction of the qualified building, if the economic
26 benefits of the deferral are passed to a lessee as provided in
27 subsection (5)(b)(ii)(A) of this section; or

28 (iii) Tenant improvements for a qualified building, if the economic
29 benefits of the deferral are passed to a lessee as provided in
30 subsection (5)(b)(ii)(A) of this section.

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

35 (c) If the investment project is a phased project, "initiation of
36 construction" shall apply separately to each phase.

37 (7) "Manufacturing" has the meaning provided in RCW 82.04.120.

1 (8) "Medical device" means an instrument, apparatus, implement,
2 machine, contrivance, implant, in vitro reagent, or other similar or
3 related article, including any component, part, or accessory, that is
4 designed or developed and:

5 (a) Recognized in the national formulary, or the United States
6 pharmacopeia, or any supplement to them;

7 (b) Intended for use in the diagnosis of disease, or in the cure,
8 mitigation, treatment, or prevention of disease or other conditions in
9 human beings or other animals; or

10 (c) Intended to affect the structure or any function of the body of
11 man or other animals, and which does not achieve any of its primary
12 intended purposes through chemical action within or on the body of man
13 or other animals and which is not dependent upon being metabolized for
14 the achievement of any of its principal intended purposes.

15 (9) "Person" has the meaning provided in RCW 82.04.030.

16 (10) "Qualified buildings" means construction of new structures,
17 and expansion or renovation of existing structures for the purpose of
18 increasing floor space or production capacity used for biotechnology
19 product manufacturing or medical device manufacturing activities,
20 including plant offices, commercial laboratories for process
21 development, quality assurance and quality control, and warehouses or
22 other facilities for the storage of raw material or finished goods if
23 the facilities are an essential or an integral part of a factory,
24 plant, or laboratory used for biotechnology product manufacturing or
25 medical device manufacturing. If a building is used partly for
26 biotechnology product manufacturing or medical device manufacturing and
27 partly for other purposes, the applicable tax deferral shall be
28 determined by apportionment of the costs of construction under rules
29 adopted by the department.

30 (11) "Qualified machinery and equipment" means all new industrial
31 and research fixtures, equipment, and support facilities that are an
32 integral and necessary part of a biotechnology product manufacturing or
33 medical device manufacturing operation. "Qualified machinery and
34 equipment" includes: Computers; software; data processing equipment;
35 laboratory equipment; manufacturing components such as belts, pulleys,
36 shafts, and moving parts; molds, tools, and dies; operating structures;
37 and all equipment used to control or operate the machinery.

1 (12) "Recipient" means a person receiving a tax deferral under this
2 chapter.

3 NEW SECTION. **Sec. 3.** Application for deferral of taxes under this
4 chapter must be made and approved before initiation of the construction
5 of the investment project or acquisition of equipment or machinery.
6 The application shall be made to the department in a form and manner
7 prescribed by the department. The application shall contain
8 information regarding the location of the investment project, the
9 applicant's average employment in the state for the prior year,
10 estimated or actual new employment related to the project, estimated or
11 actual wages of employees related to the project, estimated or actual
12 costs, time schedules for completion and operation, and other
13 information required by the department. The department shall rule on
14 the application within sixty days.

15 NEW SECTION. **Sec. 4.** (1) The department shall issue a sales and
16 use tax deferral certificate for state and local sales and use taxes
17 due under chapters 82.08, 82.12, and 82.14 RCW for each eligible
18 investment project.

19 (2) No certificate may be issued for an investment project that has
20 already received a deferral under chapter 82.60 or 82.63 RCW or this
21 chapter.

22 (3) The department shall keep a running total of all deferrals
23 granted under this chapter during each fiscal biennium.

24 (4) This section expires January 1, 2017.

25 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
26 this section and section 8 of this act, taxes deferred under this
27 chapter need not be repaid.

28 (2)(a) If, on the basis of the survey under section 8 of this act
29 or other information, the department finds that an investment project
30 is used for purposes other than qualified biotechnology product
31 manufacturing or medical device manufacturing activities at any time
32 during the calendar year in which the eligible investment project is
33 certified by the department as having been operationally completed, or
34 at any time during any of the seven succeeding calendar years, a

1 portion of deferred taxes shall be immediately due and payable
2 according to the following schedule:

3	Year in which use occurs	% of deferred taxes due
4	1	100%
5	2	87.5%
6	3	75%
7	4	62.5%
8	5	50%
9	6	37.5%
10	7	25%
11	8	12.5%

12 (b) If a recipient of the deferral fails to complete the annual
13 survey required under section 8 of this act by the date due, the amount
14 of deferred tax specified in section 8(6) of this act shall be
15 immediately due and payable. If the economic benefits of the deferral
16 are passed to a lessee as provided in section 2 of this act, the lessee
17 is responsible for payment to the extent the lessee has received the
18 economic benefit.

19 (3) For a violation of subsection (2)(a) of this section, the
20 department shall assess interest at the rate provided for delinquent
21 taxes, but not penalties, retroactively to the date of deferral. The
22 debt for deferred taxes shall not be extinguished by insolvency or
23 other failure of the recipient. Transfer of ownership does not
24 terminate the deferral. The deferral is transferred, subject to the
25 successor meeting the eligibility requirements of this chapter, for the
26 remaining periods of the deferral.

27 (4) Notwithstanding subsection (2) of this section, deferred taxes
28 on the following need not be repaid:

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

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

34 NEW SECTION. **Sec. 6.** Chapter 82.32 RCW applies to the
35 administration of this chapter.

1 NEW SECTION. **Sec. 7.** Applications received by the department
2 under this chapter are not confidential and are subject to disclosure.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.32 RCW
4 to read as follows:

5 (1) For the purposes of this section, "biotechnology product and
6 medical device business tax incentive" or "tax incentive" means the
7 sales and use tax deferrals under chapter 82.-- RCW (sections 1 through
8 7 of this act).

9 (2) The legislature finds that accountability and effectiveness are
10 important aspects of setting tax policy. In order to make policy
11 choices regarding the best use of limited state resources, the
12 legislature needs information to evaluate whether the stated goals of
13 legislation were achieved.

14 (3) The goals of the biotechnology product and medical device
15 business tax incentives are to:

16 (a) Encourage the creation, expansion, and retention of commercial
17 biotechnology product and medical device manufacturing operations and
18 related job opportunities; and

19 (b) Fully mature the life sciences industry by creating a
20 sustainable commercial sector.

21 (4)(a) A person who receives the benefit of a biotechnology product
22 and medical device business tax incentive shall provide an annual
23 survey to the department. The survey is due by March 31st following
24 any year in which a tax incentive is claimed or used. The survey shall
25 not include names of employees. The survey shall include the amount of
26 the tax incentives claimed or used for the reporting year. The survey
27 shall also include the following information for employment positions
28 in Washington:

29 (i) The number of total employment positions;

30 (ii) Full-time, part-time, and temporary employment positions as a
31 percent of total employment;

32 (iii) The number of employment positions according to the following
33 wage bands: Less than thirty thousand dollars; thirty thousand dollars
34 or greater, but less than sixty thousand dollars; and sixty thousand
35 dollars or greater. A wage band containing fewer than three
36 individuals may be combined with another wage band; and

1 (iv) The number of employment positions that have employer-provided
2 medical, dental, and retirement benefits, by each of the wage bands.

3 (b) The department may request additional information necessary to
4 measure the results of the tax incentive, to be submitted at the same
5 time as the survey.

6 (c) All information collected under this subsection, except the
7 amount of the tax incentive claimed or used, is deemed taxpayer
8 information under RCW 82.32.330 and is not disclosable. Information on
9 the amount of tax incentive claimed or used is not subject to the
10 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
11 public upon request.

12 (5) The department shall use the information from this section to
13 prepare summary descriptive statistics by category. No fewer than
14 three taxpayers shall be included in any category. The department
15 shall report these statistics to the legislature each year by September
16 1st.

17 (6) If a person fails to submit an annual survey under subsection
18 (4)(a) of this section by the due date of the survey, the department
19 shall declare 12.5 percent of the deferred tax from the date of
20 deferral to be immediately due and payable. Excise taxes payable under
21 this subsection are subject to interest but not penalties, as provided
22 under this chapter. This information is not subject to the
23 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
24 public upon request.

25 (7) The department shall use the information to study the tax
26 incentive specified in subsection (1) of this section. The department
27 shall report to the legislature by December 1, 2009, and December 1,
28 2015. The reports shall measure the number of new biotechnology
29 product and medical device manufacturing facilities established in
30 Washington, the amount of investment in biotechnology product and
31 medical device manufacturing facilities, the number of facilities and
32 investment by firms that utilized the biotechnology product and medical
33 device business tax incentive, the number of biotechnology product and
34 medical device manufacturing jobs in these facilities, the wages and
35 benefits paid for biotechnology product and medical device
36 manufacturing jobs, and the wages and benefits of biotechnology product
37 and medical device manufacturing jobs compared to wages and benefits of
38 other manufacturing jobs and jobs in other economic sectors.

1 **Sec. 9.** RCW 82.32.600 and 2005 c 514 s 1002 are each amended to
2 read as follows:

3 (1) Persons required to file surveys under RCW 82.04.4452 must
4 electronically file with the department all surveys, returns, and any
5 other forms or information the department requires in an electronic
6 format as provided or approved by the department, unless the department
7 grants relief under subsection (2) of this section. As used in this
8 section, "returns" has the same meaning as "return" in RCW 82.32.050.

9 (2) Upon request, the department may relieve a person of the
10 obligations in subsection (1) of this section if the person's taxes
11 have been reduced a cumulative total of less than one thousand dollars
12 from all of the credits, exemptions, or preferential business and
13 occupation tax rates, for which a person is required to file an annual
14 survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570,
15 82.32.560, 82.60.070, (~~or~~) 82.63.020, or section 8 of this act.

16 (3) Persons who no longer qualify for relief under subsection (2)
17 of this section will be notified in writing by the department and must
18 comply with subsection (1) of this section by the date provided in the
19 notice.

20 (4) Any survey, return, or any other form or information required
21 to be filed in an electronic format under subsection (1) of this
22 section is not filed until received by the department in an electronic
23 format.

24 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2006.

25 NEW SECTION. **Sec. 11.** Sections 1 through 7 of this act constitute
26 a new chapter in Title 82 RCW.

27 NEW SECTION. **Sec. 12.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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