FINAL BILL REPORT
ESB 5901

PARTIAL VETO
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Synopsis as Enacted

Brief Description: Concerning economic development tax incentives for targeted counties.

Sponsors: Senators Randall, Billig, Holy, Mullet, Nguyen and Saldaña.

Senate Committee on Business, Financial Services & Trade
Senate Committee on Ways & Means
House Committee on Finance

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

In general, construction activities constitute retail services subject to sales tax. Construction activities include, but are not limited to installing, repairing, cleaning, improving, constructing and decorating real property; constructing and improving new or existing buildings and structures; and cleaning, fumigating, razing or moving structures. Generally, businesses performing construction activities must collect and remit retail sales tax on their total charges to the customer for the project unless a specific exemption applies. This taxable amount includes charges for permits and other fees, labor, profit, materials and charges for subcontractors. Sales tax rates vary around the state. Contractors performing retail services must collect sales tax based on the tax rate of the jurisdiction in which they perform their services.

Sales and Use Tax Deferral Programs. Deferral programs authorize businesses the ability to postpone payment of sales and use taxes based on meeting specific requirements and

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performance criteria. Once an application for a deferral program is filed and approved, businesses are granted a tax deferral certificate which must be provided to vendors and contractors to defer sales or use tax. Over the years, the Legislature has authorized various sales and use tax deferral programs, some of which allow for a complete waiver of sales and use taxes if certain specific requirements and performance criteria are met over a specified period of time.

Summary: A new sales and use tax deferral program is established for investment projects in qualifying counties. A qualifying county is a county with a population of less than 650,000 at the time an application for deferral is submitted. An investment project means construction of new structures, or expansion or renovation of existing structures, for increasing floor space or production capacity used for manufacturing or research and development activities. An investment project also includes the investment in all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation.

Application for deferral of taxes must be made before initiation of the construction of the investment project or acquisition of machinery or equipment. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by DOR. DOR must rule on the application within 60 days. DOR may not accept applications for the deferral after June 30, 2032.

If approved, DOR must issue a sales and use tax deferral certificate for state and local sales and use taxes on each eligible investment project. The amount of state and local sales and use taxes eligible for deferral is limited to $400,000 per eligible investment project per person.

The recipient of a deferral certificate must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. The investment project must be operationally complete within five calendar years from the issuance of the tax deferral certificate.

If an investment project is used for purposes other than a qualified manufacturing or research and development operation at any time during the calendar year in which the investment project is certified by DOR as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in Which Use Occurs	Percent of Deferred Taxes Due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

After the 8-year period, deferred sales and use taxes would not have to be repaid.

Each recipient of a deferral certificate must file a complete annual tax performance report with DOR during the period covered by the schedule above providing wage, employment, and tax savings information.

The Joint Legislative Audit and Review Committee (JLARC), as part of its tax preference review process, must use the information reported on the annual tax performance report to study the tax deferral program. JLARC must report to the Legislature by December 1, 2030. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as JLARC selects.

Votes on Final Passage:

Senate	46	0	
House	69	28	(House amended)
Senate	36	12	(Senate concurred)

Effective: July 1, 2022

Partial Veto Summary:

Changes to the existing warehouse sales and use tax remittance program are removed.