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**SUBSTITUTE SENATE BILL 5029**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Business, Financial Services & Trade (originally sponsored by Senators Honeyford and Short)

READ FIRST TIME 02/10/21.

1 AN ACT Relating to tax deferrals for investment projects in high  
2 unemployment counties; amending RCW 82.60.010, 82.60.020, 82.60.049,  
3 82.60.070, and 82.60.120; adding new sections to chapter 82.60 RCW;  
4 repealing RCW 82.60.060 and 82.60.065; providing an effective date;  
5 providing expiration dates; and declaring an emergency.

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

7 **Sec. 1.** RCW 82.60.010 and 2010 1st sp.s. c 16 s 1 are each  
8 amended to read as follows:

9 The legislature finds that there are ~~((several areas))~~ counties  
10 in the state that ~~((are characterized by very high levels of~~  
11 ~~unemployment and poverty))~~ experience chronically high levels of  
12 unemployment and that state policies are necessary to promote  
13 economic stimulation and new employment opportunities in these  
14 counties. The legislature further finds that ~~((economic stagnation is~~  
15 ~~the primary cause of this high unemployment rate and poverty; that~~  
16 ~~new state policies are necessary in order to promote economic~~  
17 ~~stimulation and new employment opportunities in these distressed~~  
18 ~~areas; and that policies providing incentives for economic growth in~~  
19 ~~these distressed areas are essential))~~ firms participating in a tax  
20 deferral program in high unemployment counties created more jobs and  
21 experienced higher levels of income growth than firms that did not

1 participate in the deferral. For these reasons, the legislature  
2 reestablishes a tax deferral program to be effective solely in  
3 ~~((distressed))~~ counties experiencing high levels of unemployment. The  
4 legislature declares that this limited program serves the vital  
5 public purpose of creating employment opportunities and reducing  
6 poverty in ~~((the—distressed))~~ counties experiencing levels of  
7 unemployment that are higher than those of the state.

8 **Sec. 2.** RCW 82.60.020 and 2010 1st sp.s. c 16 s 2 are each  
9 amended to read as follows:

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

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

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

15 (3) "Eligible area" means (~~÷~~

16 ~~(a) Through June 30, 2010, a rural county as defined in RCW~~  
17 ~~82.14.370; and~~

18 ~~(b) Beginning July 1, 2010,~~) a qualifying county.

19 (4) (a) "Eligible investment project" means an investment project  
20 that is located, as of the date the application required by ~~((RCW~~  
21 ~~82.60.030))~~ section 3 of this act is received by the department, in  
22 an eligible area as defined in subsection (3) of this section.

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

30 (5) "Initiation of construction" has the same meaning as in RCW  
31 82.63.010.

32 (6) "Investment project" means an investment in qualified  
33 buildings or qualified machinery and equipment, including labor and  
34 services rendered in the planning, installation, and construction of  
35 the project.

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

38 (a) ~~((Before July 1, 2010: (i) Computer programming, the~~  
39 ~~production of computer software, and other computer-related services,~~

1 but only when the computer programming, production of computer  
2 software, or other computer-related services are performed by a  
3 manufacturer as defined in RCW 82.04.110 and contribute to the  
4 production of a new, different, or useful substance or article of  
5 tangible personal property for sale; (ii) the activities performed by  
6 research and development laboratories and commercial testing  
7 laboratories; and (iii) the conditioning of vegetable seeds; and

8 ~~(b) Beginning July 1, 2010: (i))~~ The activities performed by  
9 research and development laboratories and commercial testing  
10 laboratories; and ~~((ii) the))~~

11 (b) The conditioning of vegetable seeds.

12 (8) "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 (9) "Person" has the meaning given in RCW 82.04.030.

21 ~~((9))~~ (10) "Qualified buildings" means construction of new  
22 structures, and expansion or renovation of existing structures for  
23 the purpose of increasing floor space or production capacity used for  
24 manufacturing or research and development activities, including plant  
25 offices and warehouses or other facilities for the storage of raw  
26 material or finished goods if such facilities are an essential or an  
27 integral part of a factory, mill, plant, or laboratory used for  
28 manufacturing or research and development. If a building is used  
29 partly for manufacturing or research and development and partly for  
30 other purposes, the applicable tax deferral must be determined by  
31 apportionment of the costs of construction under rules adopted by the  
32 department.

33 ~~((10))~~ (11) "Qualified employment position" means a permanent  
34 full-time employee employed in the eligible investment project during  
35 the entire tax year. The term "entire tax year" means a full-time  
36 position that is filled for a period of ~~((twelve))~~ 12 consecutive  
37 months. The term "full-time" means at least ~~((thirty-five))~~ 35 hours  
38 a week, ~~((four hundred fifty-five))~~ 455 hours a quarter, or ~~((one~~  
39 thousand eight hundred twenty)) 1,820 hours a year.

1       (~~(11)~~) (12) "Qualified machinery and equipment" means all new  
2 industrial and research fixtures, equipment, and support facilities  
3 that are an integral and necessary part of a manufacturing or  
4 research and development operation. "Qualified machinery and  
5 equipment" includes: Computers; software; data processing equipment;  
6 laboratory equipment; manufacturing components such as belts,  
7 pulleys, shafts, and moving parts; molds, tools, and dies; operating  
8 structures; and all equipment used to control or operate the  
9 machinery.

10       (~~(12)~~) (13) "Qualifying county" means a county that has an  
11 unemployment rate, as determined by the employment security  
12 department, which is at least (~~(twenty)~~) 20 percent above the state  
13 average for the three calendar years immediately preceding the year  
14 in which the list of qualifying counties is established or updated,  
15 as the case may be, as provided in RCW 82.60.120.

16       (~~(13)~~) (14) "Recipient" means a person receiving a tax deferral  
17 under this chapter.

18       (~~(14)~~) (15) "Research and development" means the development,  
19 refinement, testing, marketing, and commercialization of a product,  
20 service, or process before commercial sales have begun, but only when  
21 such activities are intended to ultimately result in the production  
22 of a new, different, or useful substance or article of tangible  
23 personal property for sale. As used in this subsection, "commercial  
24 sales" excludes sales of prototypes or sales for market testing if  
25 the total gross receipts from such sales of the product, service, or  
26 process do not exceed (~~(one million dollars)~~) \$1,000,000.

27       NEW SECTION.   **Sec. 3.** A new section is added to chapter 82.60  
28 RCW to read as follows:

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

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

3 (2) The department may not accept applications for the deferral  
4 under this chapter after June 30, 2031.

5 (3) This section expires July 1, 2031.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.60  
7 RCW to read as follows:

8 (1) The department must issue a sales and use tax deferral  
9 certificate for state and local sales and use taxes due under  
10 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment  
11 project.

12 (2) The department must keep a running total of all deferrals  
13 granted under this chapter during each fiscal biennium. The amount of  
14 state and local sales and use taxes eligible for deferral under this  
15 chapter is limited to \$400,000 per eligible investment project per  
16 person.

17 (3) This section expires July 1, 2031.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.60  
19 RCW to read as follows:

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

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

31 **Sec. 6.** RCW 82.60.049 and 2010 1st sp.s. c 16 s 7 are each  
32 amended to read as follows:

33 (1) For the purposes of this section:

34 (a) "Eligible area" also means a designated community empowerment  
35 zone approved under RCW 43.31C.020.

36 (b) "Eligible investment project" also means an investment  
37 project in an eligible area as defined in this section.

1 (2) In addition to the provisions of (~~RCW 82.60.040~~) section 4  
2 of this act, the department shall issue a sales and use tax deferral  
3 certificate for state and local sales and use taxes due under  
4 chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment  
5 project that is located in an eligible area, if the applicant  
6 establishes that at the time the project is operationally complete:

7 (a) The applicant will hire at least one qualified employment  
8 position for each (~~seven hundred fifty thousand dollars~~) \$750,000  
9 of investment for which a deferral is requested; and

10 (b) The positions will be filled by persons who at the time of  
11 hire are residents of the community empowerment zone. As used in this  
12 subsection, "resident" means the person makes his or her home in the  
13 community empowerment zone or the county in which the zone is  
14 located. A mailing address alone is insufficient to establish that a  
15 person is a resident for the purposes of this section. The persons  
16 must be hired after the date the application is filed with the  
17 department.

18 (3) All other provisions and eligibility requirements of this  
19 chapter apply to applicants eligible under this section.

20 (4) The qualified employment position must be filled by the end  
21 of the calendar year following the year in which the project is  
22 certified as operationally complete. If a person does not meet the  
23 requirements for qualified employment positions by the end of the  
24 second calendar year following the year in which the project is  
25 certified as operationally complete, all deferred taxes are  
26 immediately due.

27 **Sec. 7.** RCW 82.60.070 and 2017 c 135 s 36 are each amended to  
28 read as follows:

29 (1)(a) Each recipient of a deferral of taxes granted under this  
30 chapter must file a complete annual tax performance report with the  
31 department under RCW 82.32.534 during the period covered by the  
32 schedule under subsection (2) of this section. If the economic  
33 benefits of the deferral are passed to a lessee as provided in RCW  
34 82.60.025, the lessee must file a complete annual tax performance  
35 report, and the applicant is not required to file a complete annual  
36 tax performance report.

37 (b) The (~~department~~) joint legislative audit and review  
38 committee, as part of its tax preference review process under chapter  
39 43.136 RCW, must use the information reported on the annual tax

1 performance report required by this section to study the tax deferral  
2 program authorized under this chapter. The ~~((department))~~ committee  
3 must report to the legislature by December 1, ~~((2018))~~ 2028. The  
4 report must measure the effect of the program on job creation, the  
5 number of jobs created for residents of eligible areas, company  
6 growth, and such other factors as the ~~((department))~~ committee  
7 selects.

8 ~~(2) ((Except as provided in RCW 82.60.063, if, on the basis of a~~  
9 ~~tax performance report under RCW 82.32.534 or other information, the~~  
10 ~~department finds that an investment project is not eligible for tax~~  
11 ~~deferral under this chapter, the amount of deferred taxes outstanding~~  
12 ~~for the project, according to the repayment schedule in RCW~~  
13 ~~82.60.060, is immediately due.))~~ (a) Except as otherwise provided in  
14 this chapter, taxes deferred under this chapter need not be repaid.

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

	<u>Year in which</u>	<u>% of deferred taxes due</u>
	<u>use occurs</u>	
26	<u>1</u>	<u>100%</u>
27		
28	<u>1</u>	<u>100%</u>
29	<u>2</u>	<u>87.5%</u>
30	<u>3</u>	<u>75%</u>
31	<u>4</u>	<u>62.5%</u>
32	<u>5</u>	<u>50%</u>
33	<u>6</u>	<u>37.5%</u>
34	<u>7</u>	<u>25%</u>
35	<u>8</u>	<u>12.5%</u>

1 (c) If the economic benefits of the deferral are passed to a  
2 lessee as provided in RCW 82.60.025, the lessee is responsible for  
3 payment to the extent the lessee has received the economic benefit.

4 (3) For purposes of ((this)) subsection (2) of this section, the  
5 repayment schedule ((in RCW 82.60.060)) is tolled during the period  
6 of time that a taxpayer is receiving relief from repayment of  
7 deferred taxes under RCW 82.60.063.

8 ((3)) (4) A recipient who must repay deferred taxes under  
9 subsection ((2)) (3) of this section because the department has  
10 found that an investment project is not eligible for tax deferral  
11 under this chapter is no longer required to file annual tax  
12 performance reports under RCW 82.32.534 beginning on the date an  
13 investment project is used for nonqualifying purposes.

14 ((4)) (5) The department must assess interest at the rate  
15 provided for delinquent taxes, but not penalties, retroactively to  
16 the date of deferral for a recipient who must repay deferred taxes  
17 under subsection (3) of this section because the department has found  
18 that an investment project is not eligible for tax deferral. The debt  
19 for deferred taxes will not be extinguished by insolvency or other  
20 failure of the recipient. Transfer of ownership does not terminate  
21 the deferral. The deferral is transferred, subject to the successor  
22 meeting the eligibility requirements of this chapter, for the  
23 remaining periods of the deferral.

24 (6) Notwithstanding any other provision of this section or RCW  
25 82.32.534, deferred taxes on the following need not be repaid:

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

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

31 **Sec. 8.** RCW 82.60.120 and 2010 1st sp.s. c 16 s 3 are each  
32 amended to read as follows:

33 The department, with the assistance of the employment security  
34 department, must establish a list of qualifying counties, effective  
35 July 1, ((2010)) 2021. The list of qualifying counties is effective  
36 for a ((twenty-four)) 24-month period and must be updated by July 1st  
37 of the year that is two calendar years after the list was established  
38 or last updated, as the case may be.



1        NEW SECTION.    **Sec. 9.**    The following acts or parts of acts are  
2 each repealed:

3        (1) RCW 82.60.060 (Repayment schedule) and 2010 1st sp.s. c 16 s  
4 8, 2000 c 106 s 5, & 1985 c 232 s 5; and

5        (2) RCW 82.60.065 (Tax deferral on construction labor and  
6 investment projects—Repayment forgiven) and 1995 1st sp.s. c 3 s 8,  
7 1994 sp.s. c 1 s 6, & 1986 c 116 s 14.

8        NEW SECTION.    **Sec. 10.**    This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and takes  
11 effect July 1, 2021.

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