
SUBSTITUTE SENATE BILL 5744

State of Washington

67th Legislature

2022 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Nguyen, Carlyle, Conway, Das, Kuderer, Mullet, Nobles, Pedersen, Saldaña, and Trudeau; by request of Office of Financial Management)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to tax deferrals for investment projects in clean
2 technology manufacturing, clean alternative fuels production, and
3 renewable energy storage; adding a new chapter to Title 82 RCW;
4 providing an effective date; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

11 (2) "Eligible investment project" means an investment project of
12 at least \$2,000,000 in either qualified buildings or qualified
13 machinery and equipment, or both, for any of the following new,
14 renovated, or expanded:

15 (a) Manufacturing operations;

16 (b) Facilities to produce clean fuels, subject to the limitations
17 in subsection (7)(d) of this section, or renewable and green
18 electrolytic hydrogen; or

19 (c) Storage facilities.

20 (3) "Green electrolytic hydrogen" means hydrogen produced through
21 electrolysis and does not include hydrogen manufactured using steam

1 reforming or any other conversion technology that produces hydrogen
2 from a fossil fuel feedstock.

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

6 (i) Construction of the qualified building, if the underlying
7 ownership of the building vests exclusively with the person receiving
8 the economic benefit of the deferral;

9 (ii) Construction of the qualified building, if the economic
10 benefits of the deferral are passed to a lessee as provided in
11 section 2 of this act; or

12 (iii) Tenant improvements for a qualified building, if the
13 economic benefits of the deferral are passed to a lessee as provided
14 in section 2 of this act.

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

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

21 (5) "Investment project" means an investment in either qualified
22 buildings or qualified machinery and equipment, or both, including
23 labor and services rendered in the planning, installation, and
24 construction of the project.

25 (6) "Manufacturing" has the same meaning as "to manufacture" in
26 RCW 82.04.120.

27 (7) "Manufacturing operation" means manufacturing tangible
28 personal property exclusively incorporated as an ingredient or
29 component of or used in the generation of:

30 (a) Passenger cars, light duty trucks, medium duty passenger
31 vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or
32 motorcycles that emit no exhaust gas from the onboard source of
33 power, other than water vapor;

34 (b) Charging and fueling infrastructure for electric, hydrogen,
35 or other vehicle types that emits no exhaust gas from the onboard
36 source of power, other than water vapor;

37 (c) Renewable and green electrolytic hydrogen, including
38 preparing renewable and green electrolytic hydrogen for distribution;

1 (d) Clean fuel with associated greenhouse gas emissions not
2 exceeding 80 percent of the 2017 levels established under RCW
3 70A.535.020;

4 (e) Electricity from renewable resources; or

5 (f) Storage facilities.

6 (8) "Meaningful construction" means an active construction site,
7 where excavation of a building site, laying of a building foundation,
8 or other tangible signs of construction are taking place and that
9 clearly show a progression in the construction process at the
10 location designated by the taxpayer in the application for deferral.
11 Planning, permitting, or land clearing before excavation of the
12 building site, without more, does not constitute "meaningful
13 construction."

14 (9) "Operationally complete" means the eligible investment
15 project is capable of being used for its intended purpose as
16 described in the application.

17 (10) "Person" has the same meaning as in RCW 82.04.030.

18 (11) "Qualified buildings" means construction of new structures,
19 and expansion or renovation of existing structures for the purpose of
20 increasing floor space or production capacity, used for
21 manufacturing, including plant offices and warehouses or other
22 buildings for the storage of raw materials or finished goods if the
23 facilities are an essential or an integral part of a factory, mill,
24 plant, or laboratory used for manufacturing. If a qualified building
25 is used partly for manufacturing and partly for other purposes, the
26 applicable tax deferral must be determined by apportionment of the
27 costs of construction under rules adopted by the department.

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

36 (13) "Recipient" means a person receiving a tax deferral under
37 this chapter.

38 (14) "Renewable resource" has the same meaning as in
39 RCW 82.08.816.

1 (15) "Storage facility" means a facility to (a) accept
2 electricity as an energy source and uses a chemical, thermal,
3 mechanical, or other process to store energy for subsequent delivery
4 or consumption in the form of electricity; or (b) store renewable
5 hydrogen or green electrolytic hydrogen for subsequent delivery or
6 consumption.

7 NEW SECTION. **Sec. 2.** The lessor or owner of a qualified
8 building is not eligible for a deferral under this chapter unless:

9 (1) The underlying ownership of the building, machinery, and
10 equipment vests exclusively in the same person; or

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

13 (b) The lessee that receives the economic benefit of the deferral
14 agrees in writing with the department to complete the annual tax
15 performance report required under RCW 82.32.534; and

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

21 NEW SECTION. **Sec. 3.** (1) Applications for deferral of taxes
22 under this chapter must be made before initiation of the construction
23 of the eligible investment project or acquisition of equipment or
24 machinery. The application must be made to the department in a form
25 and manner prescribed by the department. The application must contain
26 information regarding the location of the eligible investment
27 project, the applicant's average employment in the state for the
28 prior year, estimated or actual new employment related to the
29 eligible investment project, estimated or actual wages of employees
30 related to the eligible investment project, estimated or actual
31 costs, time schedules for completion and operation, and other
32 information required by the department. The department must rule on
33 the application within 60 days.

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

36 (3) This section expires January 1, 2033.

1 NEW SECTION. **Sec. 4.** (1) The department must issue a sales and
2 use tax deferral certificate for state and local sales and use taxes
3 due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each
4 eligible investment project. The certificate may only be used to make
5 purchases of materials and equipment, labor, or services to be
6 incorporated in the eligible investment project at the location
7 listed on the certificate.

8 (2) No certificate may be issued for an investment project that
9 has already received a deferral under this chapter or chapter 82.60
10 or 82.85 RCW.

11 (3) No certificate may be issued for an eligible investment
12 project that has not had an application approved by the department as
13 provided in section 3 of this act.

14 (4) The department must keep a running total of all deferrals
15 granted under this chapter during each fiscal biennium.

16 (5) This section expires January 1, 2033.

17 NEW SECTION. **Sec. 5.** (1) The recipient of a deferral
18 certificate under section 4 of this act must begin meaningful
19 construction on an eligible investment project within two years of
20 receiving a deferral certificate unless construction was delayed due
21 to circumstances beyond the recipient's control. Lack of funding is
22 not considered a circumstance beyond the recipient's control.

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

28 NEW SECTION. **Sec. 6.** (1) The recipient must begin paying the
29 deferred taxes in the second year after the date certified by the
30 department as the date on which the eligible investment project has
31 been operationally completed. The first payment of 10 percent of the
32 deferred taxes is due on December 31st of the second calendar year
33 after the certified date, with subsequent annual payments of 10
34 percent of the deferred taxes due on December 31st for each of the
35 following nine years.

36 (2) The department may authorize an accelerated repayment
37 schedule upon request of the recipient.

1 (3) Interest may not be charged on any taxes deferred under this
2 chapter for the period of deferral, although all other penalties and
3 interest applicable to delinquent excise taxes may be assessed and
4 imposed for delinquent payments under this chapter.

5 (4) The department must assess interest at the rate provided for
6 delinquent taxes, but not penalties, retroactively to the date of
7 deferral for a recipient who must repay deferred taxes under this
8 chapter because the department has found that a purchase is not
9 eligible for tax deferral.

10 (5) The debt for deferred taxes are not extinguished by
11 insolvency or other failure of the recipient.

12 (6) Transfer of ownership does not terminate the deferral. The
13 deferral is transferred, subject to the successor meeting the
14 eligibility requirements of this chapter, for the remaining periods
15 of the deferral.

16 NEW SECTION. **Sec. 7.** (1) The recipient of the deferral under
17 this chapter must receive a reduction of the amount of state sales
18 and use tax to be repaid under section 6 of this act as follows:

19 (a) Fifty percent of the state sales and use tax deferred, if the
20 department of labor and industries certifies that the eligible
21 investment project includes procurement from and contracts with
22 women, minority, or veteran-owned businesses; procurement from and
23 contracts with entities that have a history of complying with federal
24 and state wage and hour laws and regulations; apprenticeship
25 utilization; and preferred entry for workers living in the area where
26 the eligible investment project is being constructed. In the event
27 that an eligible investment project is built without one or more of
28 these standards, and a project developer or its designated principal
29 contractor demonstrates that it has made all good faith efforts to
30 meet the standards but was unable to comply due to lack of
31 availability of qualified businesses or local hires, the department
32 of labor and industries may certify that the developer complied with
33 that standard;

34 (b) Seventy-five percent of the state sales and use tax deferred,
35 if the department of labor and industries certifies that the eligible
36 investment project complies with (a) of this subsection and
37 compensates workers at prevailing wage rates determined by local
38 collective bargaining as determined by the department of labor and
39 industries; or

1 (c) One hundred percent of the state sales and use tax deferred,
2 if the department of labor and industries certifies that the eligible
3 investment project is developed under a community workforce agreement
4 or project labor agreement.

5 (2) (a) The department of labor and industries must adopt
6 emergency and permanent rules to:

7 (i) Define and set minimum requirements for all labor standards
8 identified in subsection (1) of this section as well as documentation
9 requirements and a certification process. The certification process
10 and timeline must be designed to prevent undue delay to project
11 development; and

12 (ii) Set requirements for all good faith efforts under subsection
13 (1)(a) and (b) of this section. Requirements for all good faith
14 efforts must be designed to maximize the likelihood that the project
15 is completed with the standards, and include: Proactive outreach to
16 women, minority, and veteran-owned businesses; advertising in local
17 community publications and publications appropriate to identified
18 firms and with the office of minority and women's business
19 enterprises; participating in community job fairs, conferences, and
20 trade shows; and other measures.

21 (b) The standards for procurement from and contracts with women
22 and minority-owned businesses under subsection (1)(a) of this section
23 must include a requirement that the recipient of the deferral consult
24 with the office of minority and women's business enterprises to
25 develop a plan to meet the standards or good faith efforts. The
26 requirements for good faith efforts must include the office of
27 minority and women's business enterprises review to determine
28 compliance with the plan.

29 (c) The labor standard for procurement from and contracts with
30 veteran-owned businesses under subsection (1)(a) of this section must
31 include a requirement that the recipient of the deferral consult with
32 the department of veterans affairs to develop a plan to meet the
33 standards or good faith efforts. The requirements for good faith
34 efforts must include the department of veterans affairs review to
35 determine compliance with the plan.

36 (d) The department of labor and industries must consult with the
37 office of minority and women's business enterprises, the department
38 of veterans affairs, and the Washington apprenticeship and training
39 council in setting standards and good faith efforts.

1 (3) Nothing in this section reduces the amount of local sales and
2 use taxes to be repaid under section 6 of this act. The recipient
3 must repay all local sales and use taxes due under chapters 82.08,
4 82.12, 82.14, and 81.104 RCW as provided in section 6 of this act.

5 NEW SECTION. **Sec. 8.** (1) Each recipient of a deferral of taxes
6 granted under this chapter must file a complete annual tax
7 performance report with the department under RCW 82.32.534. Reports
8 must be filed for the first calendar year after the eligible
9 investment project is operationally complete and continue through the
10 end of the calendar year in which the final repayment occurs. If the
11 economic benefits of the deferral are passed to a lessee, as provided
12 in section 2 of this act, the lessee must file a complete annual tax
13 performance report and the applicant is not required to file a
14 complete annual tax performance report.

15 (2) If the eligible investment project is not operationally
16 complete within five calendar years from the issuance of the tax
17 deferral certificate, or if, on the basis of the tax performance
18 report under RCW 82.32.534 or other information, the department finds
19 that an eligible investment project is used for purposes other than
20 those listed in section 1(2) of this act at any time during the
21 calendar year in which the investment is certified by the department
22 as having been operationally completed, or at any time during any of
23 the repayment period, a portion of deferred taxes is immediately due
24 according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1.....	100
2.....	100
3.....	100
4.....	90
5.....	80
6.....	70
7.....	60
8.....	50
9.....	40
10.....	30

1	11.....	20
2	12.....	10

3 (3) If the economic benefits of a tax deferral under this chapter
4 are passed to a lessee as provided in section 2 of this act, the
5 lessee is responsible for payment to the extent the lessee has
6 received the economic benefit.

7 NEW SECTION. **Sec. 9.** To the extent not inconsistent with the
8 provisions of this chapter, chapter 82.32 RCW applies to the
9 administration of this chapter.

10 NEW SECTION. **Sec. 10.** RCW 82.32.805 and 82.32.808 do not apply
11 to this act.

12 NEW SECTION. **Sec. 11.** Sections 1 through 10 and 12 of this act
13 constitute a new chapter in Title 82 RCW.

14 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2022.

--- END ---