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**ENGROSSED SUBSTITUTE SENATE BILL 5899**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Kilmer, Franklin, Kastama, Shin, Marr, McAuliffe, Haugen, Brown, Berkey, Prentice, Fairley, Regala, Keiser, Eide, Rockefeller, Murray, Hatfield, Hargrove, Sheldon, Oemig, and Kline)

READ FIRST TIME 02/11/09.

1       AN ACT Relating to providing a business and occupation tax credit  
2 for qualified employment positions; adding a new section to chapter  
3 82.04 RCW; and providing an effective date.

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

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW  
6 to read as follows:

7       (1) A credit is allowed against the tax due under this chapter for  
8 new qualified employment positions created as provided in this section.  
9 New qualified employment positions filled by a new hire are not  
10 eligible for the credit under this section if the new hire has been,  
11 during the twelve months preceding the date of hire, an independent  
12 contractor providing essentially the same work to the eligible business  
13 by which they are hired. Persons claiming the credit must maintain  
14 records sufficient to show that the eligibility requirement in this  
15 section has been met.

16       (2) The credit equals:

17       (a) Four thousand dollars for each qualified employment position  
18 with wages and benefits greater than forty thousand dollars annually,

1 and for which the business offers a health care plan, that is directly  
2 created in an eligible business; or

3 (b) Two thousand dollars for each qualified employment position  
4 with wages and benefits no less than one hundred fifty percent of the  
5 minimum wage and no more than forty thousand dollars annually, and for  
6 which the business offers a health care plan.

7 (3) For purposes of calculating the amount of credit under  
8 subsection (2) of this section with respect to qualified employment  
9 positions, the following applies:

10 (a) In determining the number of qualified employment positions, a  
11 fractional amount is rounded down to the nearest whole number; and

12 (b) Wages and benefits for each qualified employment position are  
13 equal to the quotient derived by dividing:

14 (i) The sum of the wages and benefits earned for the four  
15 consecutive full calendar quarters for which a credit under this  
16 section is earned by all of the person's new seasonal employees hired  
17 during that period; by

18 (ii) The number of qualified employment positions plus any  
19 fractional amount subject to rounding as provided under (a) of this  
20 subsection.

21 (4) For purposes of this section, a credit is earned for the four  
22 consecutive full calendar quarters after the calendar quarter during  
23 which the first qualified employment position is filled.

24 (5) The department must keep a running total of all credits allowed  
25 under this section during each fiscal year. The department may not  
26 allow any credits which would cause the total to exceed ten million  
27 dollars in any fiscal year. If all or part of an application for  
28 credit is disallowed under this subsection, the disallowed portion must  
29 be carried over to the next fiscal year. However, the carryover into  
30 the next fiscal year is only permitted to the extent that the cap for  
31 the next fiscal year is not exceeded.

32 (6) No recipient may use the tax credits to decertify a union or to  
33 displace existing jobs in any community in the state.

34 (7) The credit may be used against any tax due under this chapter,  
35 and may be carried over until used. No refunds may be granted for  
36 credits under this section.

37 (8) Application for tax credits under this section must be made  
38 within ninety consecutive days after the first qualified employment

1 position is filled. The application must be made to the department in  
2 a form and manner prescribed by the department. The application must  
3 contain information regarding the location of the business, the  
4 applicant's average employment, if any, at the facility for the four  
5 consecutive full calendar quarters immediately preceding the earlier of  
6 the calendar quarter during which the application required by this  
7 section is submitted to the department or the first qualified  
8 employment position is filled, estimated or actual new employment  
9 related to the business, estimated or actual wages of employees related  
10 to the business, estimated or actual costs, time schedules for  
11 completion and operation, and other information required by the  
12 department. The department must prescribe a method for calculating a  
13 seasonal employer's average employment levels. The department must  
14 rule on the application within sixty days.

15 (9)(a) Each recipient must submit a report to the department by the  
16 last day of the month immediately following the end of the four  
17 consecutive full calendar quarters for which a credit under this  
18 section is earned. The report must contain information, as required by  
19 the department, from which the department may determine whether the  
20 recipient is meeting the requirements of this section. If the  
21 recipient fails to submit a report or submits an inadequate report, the  
22 department may declare the amount of taxes for which a credit has been  
23 used to be immediately assessed and payable. The recipient must keep  
24 records, such as payroll records showing the date of hire and  
25 employment security reports, to verify eligibility under this  
26 subsection (9).

27 (b) If, on the basis of a report under this section or other  
28 information, the department finds that a business is not eligible for  
29 tax credit under this section for reasons other than failure to create  
30 the required number of qualified employment positions, the amount of  
31 taxes for which a credit has been used is immediately due.

32 (c) If, on the basis of a report under this subsection (9) or other  
33 information, the department finds that a business has failed to create  
34 the specified number of qualified employment positions, the department  
35 must assess interest, but not penalties, on the credited taxes for  
36 which a credit has been used. The interest must be assessed at the  
37 rate provided for delinquent excise taxes, must be assessed

1 retroactively to the date of the tax credit, and must accrue until the  
2 taxes for which a credit has been used are repaid.

3 (10) The employment security department must provide to the  
4 department of revenue such information needed for the department of  
5 revenue to certify all determinations of employment and wages.

6 (11) Applications, reports, and any other information received by  
7 the department under this section are subject to disclosure to the  
8 extent disclosure is not otherwise prohibited by state or federal law.

9 (12) A person claiming credit under chapter 82.62 RCW or RCW  
10 82.04.44525 or 82.04.448 cannot claim a credit under this section.

11 (13) The following definitions apply throughout this section,  
12 unless the context clearly requires otherwise.

13 (a) "Applicant" means a person applying for a tax credit under this  
14 section.

15 (b) "Eligible business" means a business located within the state  
16 of Washington with twenty or fewer employees.

17 (c) "First qualified employment position" means the first qualified  
18 employment position filled for which a credit under this section is  
19 sought.

20 (d) "Health care plan" means any "employee welfare benefit plan" as  
21 defined by the employee retirement income security act of 1974, Title  
22 29 U.S.C. Sec. 1001 et seq., and any "health plan" or "health benefit  
23 plan" as defined in RCW 48.43.005, for the purpose of providing for its  
24 employees or their beneficiaries, through the purchase of insurance or  
25 otherwise, health care services. For the purposes of this section,  
26 "health care services" means services offered or provided by health  
27 care facilities and health care providers relating to the prevention,  
28 cure, or treatment of illness, injury, or disease.

29 (e)(i)(A) "Qualified employment position" means a permanent full-  
30 time employee employed in the eligible business in Washington during  
31 four consecutive full calendar quarters.

32 (B) For seasonal employers, "qualified employment position" also  
33 includes the equivalent of a full-time employee in work hours for four  
34 consecutive full calendar quarters.

35 (ii) For purposes of this subsection (13)(d), "full time" means a  
36 normal work week of at least thirty-five hours.

37 (iii) Once a permanent, full-time employee has been employed, a

1 position does not cease to be a qualified employment position solely  
2 due to periods in which the position goes vacant, as long as:

3 (A) The cumulative period of any vacancies in that position is not  
4 more than one hundred twenty days in the four quarter period; and

5 (B) During a vacancy, the employer is training or actively  
6 recruiting a replacement permanent, full-time employee for the  
7 position.

8 (f) "Recipient" means a person receiving tax credits under this  
9 section.

10 (g) "Seasonal basis" means a continuous employment period of less  
11 than twelve consecutive months, for the purposes of "seasonal employee"  
12 and "seasonal employer" under this section.

13 (h) "Seasonal employee" means an employee of a seasonal employer  
14 who works on a seasonal basis.

15 (i) "Seasonal employer" means a person who regularly hires more  
16 than fifty percent of its employees to work on a seasonal basis.

17 (14) No applications may be accepted after June 30, 2012.

18 NEW SECTION. **Sec. 2.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2010.

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