Multiple Agency Fiscal Note Summary

Bill Number: 5849 SB	**Title:** Tax incentives

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	(1,600,000)	(1,600,000)	(1,600,000)	(4,600,000)	(4,600,000)	(4,600,000)	(5,110,000)	(5,110,000)	(5,110,000)
Total $	**(1,600,000)**	**(1,600,000)**	**(1,600,000)**	**(4,600,000)**	**(4,600,000)**	**(4,600,000)**	**(5,110,000)**	**(5,110,000)**	**(5,110,000)**

Agency Name	2021-23		2023-25		2025-27	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other		(445,500)		(1,296,900)		(1,435,500)
Local Gov. Other	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.					
Local Gov. Total		(445,500)		(1,296,900)		(1,435,500)

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Joint Legislative Audit and Review Committee	.1	18,900	18,900	18,900	.0	8,400	8,400	8,400	.0	8,400	8,400	8,400
Department of Revenue	.3	133,900	133,900	133,900	.2	29,000	29,000	29,000	.2	29,000	29,000	29,000
Total $	**0.4**	**152,800**	**152,800**	**152,800**	**0.2**	**37,400**	**37,400**	**37,400**	**0.2**	**37,400**	**37,400**	**37,400**

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Joint Legislative Audit and Review Committee	.0	0	0	.0	0	0	.0	0	0
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Estimated Capital Budget Breakout

NONE

Prepared by: Cheri Keller, OFM	**Phone:** (360) 584-2207	**Date Published:** Final 1/24/2022

Individual State Agency Fiscal Note

Bill Number: 5849 SB	Title: Tax incentives	Agency: 014-Joint Legislative Audit and Review Committee

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1	0.0	0.1	0.0	0.0
Account					
General Fund-State 001-1	12,600	6,300	18,900	8,400	8,400
Total $	12,600	6,300	18,900	8,400	8,400

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact . Factors impacting the precision of these estimates , and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☐ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete entire fiscal note form Parts I-V.

X If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia , complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Alia Kennedy	Phone: 360-786-7405	Date: 01/19/2022
Agency Preparation:	Dana Lynn	Phone: 360-786-5177	Date: 01/20/2022
Agency Approval:	Keenan Konopaski	Phone: 360-786-5187	Date: 01/20/2022
OFM Review:	Gaius Horton	Phone: (360) 819-3112	Date: 01/20/2022

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This bill amends two existing incentive programs: A property tax exemption for targeted urban area construction under chapter 84.25 RCW and a preferential B&O tax rate for certain solar energy system manufacturers and wholesalers. The bill also re-opens applications for a sales and use tax deferral for manufacturers in high unemployment rural counties under chapter 82.60 RCW.

BILL DETAILS

Section 1 amends RCW 84.25.030 to remove the requirement that “lands zoned for industrial and manufacturing uses” must have been zoned as such as of December 31, 2014.

Sections 2 and 4 correct statutory references in RCWs 82.60.049 and 82.60.020.

Section 3 extends the 0.275% preferential B&O rate provided under RCW 82.04.294 for certain solar silicon system businesses from July 1, 2027, to July 1, 2032.

Section 5 changes the timeframe for when the Department of Revenue (DOR) must establish a list of qualifying high unemployment counties to every 24 months as long as applications are accepted for the tax incentive program.

Section 6 creates a new section in chapter 82.60, reestablishing a sales and use tax deferral for certain manufacturers, which expired July 1, 2020.

Businesses must apply to DOR for the deferral prior to the start of construction or purchase of qualifying machinery or equipment. The application must contain information detailed in the bill. The Department must issue a deferral certificate on each eligible project and keep a running total of all deferrals granted. Applications close for new participants July 1, 2032.

TAX PERFORMANCE STATEMENT DETAILS

Section 7 provides a tax preference performance statement that categorizes the preference provided in section 3 as intended to improve industry competitiveness and create and retain jobs, as indicated under RCW 82.32.808 (2)(b) and (c).

The specific public policy objective is stated to maintain and grow jobs in the solar silicon industry.

If a review finds that the number of people employed by the solar silicon industry in Washington is the same or more than in 2019, and that at least 60% of the employees earn $60,000 or more a year, then the Legislature intends to extend the expiration date of the preference. JLARC is to refer to the Department of Revenue’s annual report data to perform its review.

The bill takes effect July 1, 2022, and the preferential B&O tax rate and sales and use tax deferral expire July 1, 2032.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates . Distinguish between one time and ongoing functions .

After the 2022 legislative session ends, JLARC staff would contact the DOR to ensure that that all necessary needed for our future study of the programs impacted by this bill are collected on either tax returns or via the annual tax performance survey filed by beneficiaries of the deferral program. JLARC would also consult with the Employment Security Department and identify and consult with other state agencies or other entities that track or monitor Washington’s solar silicon industry. Staff would work to establish study contacts and ensure data collection needs are identified and established.

The expenditure detail noted reflects work conducted to prepare for the future review of the high unemployment rural county deferral and reduced B&O tax rate. These studies are assumed to be completed in 2030. JLARC staff has already planned for a review of the targeted urban construction property tax exemption in 2028 - no additional costs for that preference will be incurred due to changes made in this bill.

This tax preference review may require additional resources. The audit will be conducted and presented to JLARC consistent with the processes used for other tax preference reviews. Based on all tax preference legislation that is passed, JLARC may subsequently determine that it can absorb the costs for this proposed bill in its base budget, if the workload of other enacted tax preference legislation does not exceed current staffing. JLARC will assess all of the tax preference reviews mandated in the 2022 legislative session.

This audit will require an estimated 2 audit months.

JLARC Audit Months: JLARC calculates its staff resources in "Audit Months" to estimate the time and effort to undertake and complete its studies. An "Audit Month" reflects a JLARC analyst’s time for a month, together with related administrative, support, and goods/services costs. JLARC’s anticipated 2021-23 costs are calculated at approximately $21,000 per audit month.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	12,600	6,300	18,900	8,400	8,400
		Total $	12,600	6,300	18,900	8,400	8,400

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1		0.1		
A-Salaries and Wages	8,000	4,000	12,000	5,400	5,400
B-Employee Benefits	2,500	1,300	3,800	1,600	1,600
C-Professional Service Contracts					
E-Goods and Other Services	1,900	900	2,800	1,200	1,200
G-Travel	200	100	300	200	200
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	12,600	6,300	18,900	8,400	8,400

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Research Analyst	119,519	0.1		0.1		
Support staff	81,590					
Total FTEs		0.1		0.1		0.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Department of Revenue Fiscal Note

Bill Number: 5849 SB	Title: Tax incentives	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax		(1,600,000)	(1,600,000)	(4,600,000)	(5,110,000)
Total $		(1,600,000)	(1,600,000)	(4,600,000)	(5,110,000)

Estimated Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.2	0.3	0.3	0.2	0.2
Account					
GF-STATE-State 001-1	103,800	30,100	133,900	29,000	29,000
Total $	103,800	30,100	133,900	29,000	29,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

X If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

X Capital budget impact, complete Part IV.

X Requires new rule making, complete Part V.

Legislative Contact:	Alia Kennedy	Phone: 360-786-7405	Date: 01/19/2022
Agency Preparation:	Marianne McIntosh	Phone: 360-534-1505	Date: 01/24/2022
Agency Approval:	Don Gutmann	Phone: 360-534-1510	Date: 01/24/2022
OFM Review:	Cheri Keller	Phone: (360) 584-2207	Date: 01/24/2022

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in SB 5849, 2022 Legislative Session.

CURRENT LAW:
Current law provided a sales and use tax deferral for qualified investment projects located in high unemployment counties or community empowerment zones through July 1, 2020 (Chapter 82.60). Deferral applications approved prior to July 1, 2020, are valid as long as certain requirements are met (stated in Chapter 82.60).

To qualify a firm must be involved in manufacturing, activities of research and development (R&D) or commercial testing laboratories, or conditioning of vegetable seeds. The investment project includes qualified buildings or machinery and equipment including labor and services rendered in the planning, installation, and construction of the project.

Applications for the deferral and the Department of Revenue's (Department) authority to issue deferral certificates expired July 1, 2020.

High unemployment counties mean a county with an unemployment rate, as determined by the Department of Employment Security, of at least 20% above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated. The qualifying county list is effective for a 24-month period and must be updated by July 1st, two years following the last update.

For investment projects located in a community empowerment zone, applicants must hire at least one qualified employment position for each $750,000 of investment. The position must be filled by persons who, at the time of hire, are residents of the community empowerment zone or the county in which the zone is located. The qualified position must be filled by the end of the calendar year in which the project is operationally complete. If the position is not filled by the end of the second calendar year following the year in with the project is operationally complete, then all deferred taxes are immediately due.

The deferral becomes a waiver of the tax if the business maintains qualified business activities for eight years. If the investment project is no longer utilized for qualifying business activities prior to fulfilling the eight-year requirement, the deferred taxes become immediately due based on the following schedule:

Year qualifying activities cease	Percent tax due
1	100%
2	100%
3	100%
4	100%
5	90%
6	75%
7	55%
8	30%

Persons receiving the benefit of the deferral are required to file an annual tax performance report beginning the year following the year in which the project is operationally complete and continue filing for the next seven years.

The law provides a preferential business and occupation (B&O) tax rate of .275% for manufacturers, manufacturers selling their product at wholesale, and processors for hire of solar energy systems using photovoltaic modules or stirling converters and specified components of such systems. The preferential rate expires July 1, 2027.

PROPOSAL:
The bill reinstates the sales and use tax deferral for qualified investment projects located in high unemployment counties or community empowerment zones. The bill allows the Department to issue sales and use tax deferral certificates for eligible projects in qualifying counties until July 1, 2032. The Department must keep a running total of deferrals granted during each fiscal biennium.

The bill extends the expiration date for the solar energy systems manufacturing preferential B&O rate to July 1, 2032.

EFFECTIVE DATE:
This bill takes effect on July 1, 2022.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency , identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources . Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates . Distinguish between one time and ongoing functions .

ASSUMPTIONS:
- The Department begins accepting applications on July 1, 2022 and has 60 days to review. This results in 9 months of impacted collections in Fiscal Year 2023.
- Projects are operationally complete within in one year of when the Department received the application.
- This estimate uses national level investment in fixed assets data that has been adjusted to reflect Washington investment levels.
- To estimate the local government impacts, this estimate uses the statewide average rural local tax rate for Fiscal Year 2021 of 1.8463%.
- The growth for qualifying project costs mirrors the annual growth for non-residential investment in R&D and private investment in industrial facilities for the United States as reflected in the November 2021 IHS Markit forecast.
- Based on Employment Security Department's 2020 "Distressed areas list" as of April 28, 2021, 17 of the 39 counties qualify for the high unemployment deferral.
- The qualifying counties are as follows:

Clallam	Grays Harbor	Pacific	Wahkiakum
Cowlitz	Jefferson	Pend Oreille	Yakima
Ferry	Lewis	Skagit	
Franklin	Mason	Skamania	
Grant	Okanogan	Stevens	

- These qualifying counties remain high unemployment counties until the deferral expires and no large counties become high unemployment counties.
- The Department may not accept deferral applications after July 1, 2032.
- The impact from extending the preferential B&O rate for manufacturing solar energy systems occurs after Fiscal Year 2027 and is therefore not reflected.

POTENTIAL LITIGATION:
Legislation creating new exemptions and deferrals for construction projects presents a risk that the federal government or federal contractors will seek to re-litigate Washington v. United States. This risk increases with each additional exemption or deferral that the state enacts.

The Department's legal counsel at the Attorney General's Office has opined that the federal contractor risk applies to all exemptions and deferrals of construction activity, not just construction projects of the type that the federal government is likely to engage in. It also applies even if the exemption or deferral applies to federal construction projects as well as non-federal construction projects.

Sales/use tax exemptions pose the greatest legal risk because they plainly treat the beneficiaries of the exemption more favorably than federal contractors are treated. Sales /use tax deferrals also pose a significant legal risk. Each such exemption or deferral increases the likelihood that the federal government or federal contractors will seek to re-litigate Washington v. United States in which they would claim that Washington now discriminates against federal contractors.

If a legal challenge to a deferral or exemption were successful, in addition to lost future revenues, refunds potentially would be owed under the statutory period (current year plus four previous years). Each year approximately $90 million is collected on federal government contracting. If refunds were included as part of a potential court decision, the revenue impact could reach nearly $500 million.

DATA SOURCES:
- Employment Security Department, 2020 list of distressed areas
- Department of Revenue, deferral data
- IHS Market, Non-residential investment in R&D and private investment in industrial facilities forecast, November 2021
- Bureau of Labor Statistics, employment data
- Bureau of Economic Analysis, fixed asset data

REVENUE ESTIMATES:
This bill decreases state revenues by an estimated $1.6 million in the nine months of impacted collections in Fiscal Year 2023, and by $2.3 million in Fiscal Year 2024, the first full year of impacted collections. This bill also decreases local revenues by an estimated $450,000 in the nine months of impacted collections in Fiscal Year 2023, and by $640,000 in Fisca Year 2024, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):
FY 2022 - $ 0
FY 2023 - ($ 1,600)
FY 2024 - ($ 2,250)
FY 2025 - ($ 2,350)
FY 2026 - ($ 2,470)
FY 2027 - ($ 2,640)

Local Government, if applicable (cash basis, $000):
FY 2022 - $ 0
FY 2023 - ($ 450)
FY 2024 - ($ 640)
FY 2025 - ($ 670)
FY 2026 - ($ 700)
FY 2027 - ($ 750)

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived . Explain how workload assumptions translate into cost estimates . Distinguish between one time and ongoing

ASSUMPTIONS:
- This legislation will affect 20 taxpayers with new deferral applications each year.

- A taxpayer claiming this new tax preference must file an annual tax performance report. Expenditures include the costs to implement the new tax preference.

FIRST YEAR COSTS:
The Department will incur total costs of $103,800 in Fiscal Year 2022. These costs include :

Labor Costs - Time and effort equates to 0.2 FTE.
- Test and verify computer systems to create a new deferral type including online application, approval letter and certificate.

Object Costs - $70,400.
- Contract computer system programming

SECOND YEAR COSTS:
The Department will incur total costs of $30,100 in Fiscal Year 2023. These costs include :

Labor Costs - Time and effort equates to 0.32 FTE.
- Create a Special Notice and identify publications and information that need to be created or updated on the Department’s website.
- Respond to tax ruling requests, email inquiries, and more difficult call backs from the telephone information center.
- Audits of additional non-qualifying deferrals.

THIRD YEAR COSTS:
The Department will incur total costs of $14,500 in Fiscal Year 2024. These costs include :

Labor Costs - Time and effort equates to 0.15 FTE.
- Audits of additional non-qualifying deferrals.

ONGOING COSTS:
Ongoing costs for Fiscal Year 2025 equal $14,500 and include similar activities described in the third year costs. Time and effort equates to 0.15 FTE.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.2	0.3	0.3	0.2	0.2
A-Salaries and Wages	16,100	17,700	33,800	18,000	18,000
B-Employee Benefits	5,800	6,300	12,100	6,400	6,400
C-Professional Service Contracts	77,400		77,400		
E-Goods and Other Services	2,500	3,400	5,900	3,200	3,200
G-Travel	400	500	900	1,000	1,000
J-Capital Outlays	1,600	2,200	3,800	400	400
Total $	$103,800	$30,100	$133,900	$29,000	$29,000

III. B - Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
EMS BAND 4	122,633		0.0	0.0		
IT SYS ADM-JOURNEY	89,916	0.1		0.1		
MGMT ANALYST4	70,956	0.1	0.0	0.1		
REVENUE AUDITOR 2	59,688		0.2	0.1	0.2	0.2
TAX INFO SPEC 4	64,332		0.1	0.1		
TAX POLICY SP 2	72,756		0.0	0.0		
TAX POLICY SP 3	82,344		0.0	0.0		
TAX POLICY SP 4	88,644		0.0	0.0		
WMS BAND 3	104,295		0.0	0.0		
Total FTEs		0.2	0.3	0.3	0.2	0.2

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules .

Should this legislation become law, the Department will use the expedited rule-making process to amend WAC 458-20-24001, titled: “Sales and use tax deferral - Manufacturing and research /development activities in high unemployment counties - Applications filed after June 30, 2010”. Persons affected by this rule-making would include taxpayers who may be eligible for the tax preference.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5849 SB	**Title:** Tax incentives

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- [X] Cities: Loss of sales tax revenue
- [X] Counties: Loss of sales tax revenue
- [X] Special Districts: Loss of sales tax revenue
- [ ] Specific jurisdictions only:
- [ ] Variance occurs due to:

Part II: Estimates

- [ ] No fiscal impacts.
- [ ] Expenditures represent one-time costs:
- [ ] Legislation provides local option:
- [X] Key variables cannot be estimated with certainty at this time: How many projects would receive a sales and use tax deferral or for what amount

Estimated revenue impacts to:

Jurisdiction	FY 2022	FY 2023	2021-23	2023-25	2025-27
City		(132,546)	(132,546)	(385,856)	(427,092)
County		(160,184)	(160,184)	(466,313)	(516,148)
Special District		(152,770)	(152,770)	(444,731)	(492,260)
TOTAL $		(445,500)	(445,500)	(1,296,900)	(1,435,500)
GRAND TOTAL $					(3,177,900)

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated expenditure impacts to:

None

Part III: Preparation and Approval

Fiscal Note Analyst: Tammi Alexander	Phone: 360-725-5038	Date: 01/24/2022
Leg. Committee Contact: Alia Kennedy	Phone: 360-786-7405	Date: 01/19/2022
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 01/24/2022
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/24/2022

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government .

This bill would:
- remove the requirement that eligible lands must be zoned as of December 31 , 2014
- extend the expiration date for the reduced business and occupation tax rate for manufacturers of certain kinds of solar energy systems and their components from July 1, 2027 to July 1, 2032
- reestablish the sales and use tax deferral for qualifying businesses that invest in facilities , machinery, or equipment in certain distressed areas

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments , identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This bill would not impact local government expenditures because no action is required.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments , identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

The sales and use tax deferral established by this bill would have an indeterminate impact on local government tax revenue . Revenue loss cannot be calculated because it is unknown how many projects would be eligible , apply for, and receive a sales tax deferral or for what amount.

According to the Department of Revenue (DOR):

This bill would decrease local revenues by an estimated $450 ,000 in the nine months of impacted collections in Fiscal Year 2023 , and by $640,000 in Fiscal Year 2024, the first full year of impacted collections.
DOR ASSUMPTIONS:
- The Department begins accepting applications on July 1 , 2022 and has 60 days to review. This results in 9 months of impacted collections in Fiscal Year 2023.
- Projects are operationally complete within in one year of when the Department received the application .
- This estimate uses national level investment in fixed assets data that has been adjusted to reflect Washington investment levels .
- To estimate the local government impacts, this estimate uses the statewide average rural local tax rate for Fiscal Year 2021 of 1 .8463%.
- The growth for qualifying project costs mirrors the annual growth for non-residential investment in R&D and private investment in industrial facilities for the United States as reflected in the November 2021 IHS Markit forecast .
- Based on Employment Security Department's 2020 "Distressed areas list" as of April 28 , 2021, 17 of the 39 counties qualify for the high unemployment deferral.
- The qualifying counties are as follows:

Clallam	Grays Harbor	Pacific	Wahkiakum
Cowlitz	Jefferson	Pend Oreille	Yakima
Ferry	Lewis	Skagit	
Franklin	Mason	Skamania	
Grant	Okanogan	Stevens	

- These qualifying counties remain high unemployment counties until the deferral expires and no large counties become high unemployment counties.
- The Department may not accept deferral applications after July 1 , 2032.
- The impact from extending the preferential B&O rate for manufacturing solar energy systems occurs after Fiscal Year 2027 and is therefor not reflected.

POTENTIAL LITIGATION:
Legislation creating new exemptions and deferrals for construction projects presents a risk that the federal government or federal contractors will seek to re-litigate Washington v. United States. This risk increases with each additional exemption or deferral that the state enacts.

The Department's legal counsel at the Attorney General's Office has opined that the federal contractor risk applies to all exemptions and deferrals of construction activity, not just construction projects of the type that the federal government is likely to engage in . It also applies even if the exemption or deferral applies to federal construction projects as well as non-federal construction projects .
Sales/use tax exemptions pose the greatest legal risk because they plainly treat the beneficiaries of the exemption more favorably than federal contractors are treated. Sales/use tax deferrals also pose a significant legal risk . Each such exemption or deferral increases the likelihood that the federal government or federal contractors will seek to re-litigate Washington v . United States in which they would claim that Washington now discriminates against federal contractors .

If a legal challenge to a deferral or exemption were successful , in addition to lost future revenues, refunds potentially would be owed under the statutory period (current year plus four previous years). Each year approximately $90 million is collected on federal government contracting. If refunds were included as part of a potential court decision , the revenue impact could reach nearly $500 million .

DOR DATA SOURCES:
- Employment Security Department, 2020 list of distressed areas
- Department of Revenue, deferral data
- IHS Market, Non-residential investment in R&D and private investment in industrial facilities forecast , November 2021
- Bureau of Labor Statistics, employment data
- Bureau of Economic Analysis, fixed asset data

Local Government, if applicable (cash basis, $000):

FY 2022 -	$ 0
FY 2023 -	($ 450)
FY 2024 -	($ 640)
FY 2025 -	($ 670)
FY 2026 -	($ 700)
FY 2027 -	($ 750)

LOCAL GOVERNMENT TAX REVENUE BREAKDOWN
Counties:

FY 2022	$0
FY 2023	-$160,184
FY 2024	-$227,817
FY 2025	-$238,496
FY 2026	-$249,175
FY 2027	-$266,973

Cities:

FY 2022	$0
FY 2023	-$132,546
FY 2024	-$188,510
FY 2025	-$197,346
FY 2026	-$206,182
FY 2027	-$220,910

Special Districts:

FY 2022	$0
FY 2023	-$152,770
FY 2024	-$217,273
FY 2025	-$227,458
FY 2026	-$237,643
FY 2027	-$254,617

METHODOLOGY:

The distributions in this note for cities, counties, and special districts are based on DOR data for local sales and use tax distributions from Calendar Year 2020. Mitigation payments and distributions to hospital benefit zones are not factored into this distribution . This results in a distribution of 35.96 percent to counties, 29.75 percent to cities, and 34.29 percent to special districts. The one percent DOR administrative fee has also been deducted from these local government figures.

SOURCES:
Department of Revenue fiscal note SB 5849 (2022)
Department of Revenue Local Tax Distributions (2020)
Joint Legislative Audit and Review Committee fiscal note, SB 5849 (2022)
Local Government Fiscal Note program, Local Sales Tax model 2022
Local Government Fiscal Note program, Sales and Use Tax Distribution model 2022
Senate Bill Report, SB 5849, Business, Financial Services and Trade Committee (January 24, 2022)