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**SUBSTITUTE SENATE BILL 5230**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Trade & Economic Development (originally sponsored by Senators Brown, Chase, Angel, Benton, Rivers, Schoesler, Bailey, Parlette, Becker, Warnick, and Dammeier)

AN ACT Relating to a pilot program that provides incentives for investments in Washington state job creation and economic development; adding a new section to chapter 82.04 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) Businesses that invest capital create jobs and generate economic activity that supports a healthy Washington economy. The legislature finds that these investments result in future revenues that support schools and our communities. Therefore, the legislature finds that a pilot program must be conducted to evaluate the effectiveness of a program that provides businesses with the latitude to invest their business and occupation tax back into their business or to locate a business in the state of Washington thereby creating jobs and capital investments in the state for the benefit of its citizens.

(2)(a) This subsection is the tax preference performance statement for the business and occupation tax credit provided in section 2 of this act for a portion of the construction costs of qualified industrial facilities. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to create or retain jobs and to provide funding to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations, as indicated in RCW 82.32.808(2) (c) and (f).

(c) It is the legislature's specific public policy objective to provide a pilot program that would provide a business and occupation tax credit for a portion of the construction costs of up to five new manufacturing facilities, two of which must be located in eastern Washington. In lieu of claiming the credit, a taxpayer may donate all or a portion of the credit to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations.

(d) To measure the effectiveness of the credit provided in this act in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee should refer to information available from the employment security department and department of revenue. If a review finds that each qualified industrial facility generated at least twenty full-time jobs, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference. For purposes of this subsection (2)(d), full-time jobs include both temporary construction jobs and permanent full-time employment positions at the qualified industrial facility within one year of the date that the facility became operationally complete as determined by the department of revenue.

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

(1) A person is allowed a credit against the tax imposed under this chapter for a portion of the costs incurred by the person for the construction of a qualified industrial facility. The credit equals the state and local retail sales taxes paid by a person on up to ten million dollars in construction costs for the qualified industrial facility.

(2) The amount of credit taken in each calendar year may not exceed the amount of tax otherwise due under this chapter for the calendar year.

(3) Credits earned may be carried over to be credited against taxes incurred in a subsequent calendar year or may be donated to the state board for community and technical colleges invest in Washington account established under subsection (9) of this section.

(4) Refunds may not be granted in the place of a credit or donation.

(5) Credits donated to the state board for community and technical colleges invest in Washington account under subsection (9) of this act are irrevocable.

(6) The credit under this section is limited to five qualified industrial facilities, at least two of which must be located east of the crest of the Cascade mountains.

(7) The department may not approve a person to receive credit under this section for the construction of more than one qualified industrial facility.

(8) Credits are available on a first-in-time basis. Before using a credit under this section, a person must submit an application to the department in a form and manner required by the department. The application must contain information regarding the location of the proposed qualified industrial facility, time schedules for completion and operation of the proposed qualified industrial facility, the anticipated manufacturing to be conducted at the proposed qualified industrial facility, and any other information required by the department. The department must rule on the application within sixty days.

(9)(a) A person may contribute all or any portion of the person's approved credit to the state board for community and technical colleges invest in Washington account hereby created in the state treasury to be used exclusively by the state board for supporting customized training programs, job skills programs, job readiness training, workforce professional development, and to assist employers with state-approved apprenticeship programs for manufacturing and production occupations.

(b) Revenues to the invest in Washington account consist of amounts transferred by the state treasurer as provided in (c) of this subsection (9).

(c) By June 1, 2016, and by June 1st of every subsequent year, the department must notify the state treasurer of the amount of credit under this section contributed to the invest in Washington account since the effective date of this section through May 15, 2016, in the case of the first notification under this subsection (9)(c), and since the previous May 15th for subsequent notifications under this subsection (9)(c). The department may make adjustments to the annual notification under this subsection (9)(c) as may be necessary to correct errors in the previous notification or offset previous contributions of amounts that did not qualify for credit under this section.

(d) By July 1, 2016, and by July 1st of every subsequent year, the state treasurer must transfer the amount included in the department's most recent notification under (c) of this subsection (9) from the general fund to the invest in Washington account. Money in the account may only be appropriated for the purposes specified in (a) of this subsection (9).

(e) Persons contributing the credit under this section may disregard the contribution of the credit for purposes of calculating the small business credit provided in RCW 82.04.4451.

(f) Nothing in this subsection may be construed to modify or expand the scope of chapter 49.04 RCW.

(g) The department must allow a person to make a contribution under this subsection when filing its excise tax return, whether on the original return or an amended return. The department may not consider a contribution to have been made under this subsection unless the amount of taxes due under this chapter as reported on the return on which the contribution is made have also been paid to the department. Once a contribution is made on a return and the taxes due under this chapter as reported on that return have been paid, the contribution may not be revoked.

(10) Credit under this section is earned, and may be claimed or contributed, for state and local retail sales taxes paid on the construction of a qualified industrial facility, subject to the limitation in subsection (1) of this section.

(11) Approved credit under this section may only be claimed on an excise tax return filed electronically in a manner provided or approved by the department for taxes originally due on or after the date that the credit was earned.

(12) Credit may be carried over until claimed or contributed, except that no credit under this section may be claimed or contributed after the date that is ten years after the effective date of this section. This subsection must be construed to provide an expiration date for the credit for purposes of RCW 82.32.805(2).

(13)(a) A person approved for the credit under this section must notify the department that the qualified industrial facility is operationally complete and must also provide the department with a signed statement from the general contractor indicating, to the best of the general contractor's knowledge, how many persons worked full-time on the construction of the qualified industrial facility, whether employed by the general contractor or any subcontractor. The notifications required under this subsection (13)(a) must be received by the department by the end of the calendar year in which the qualified industrial facility is operationally complete.

(b) A person must repay all or a portion of the credit claimed or contributed under this section under the following circumstances:

(i) If a qualified industrial facility is not operationally complete within thirty-six months of the date the department received the application for credit under this section or the person does not comply with (a) of this subsection (13), all credit claimed and contributed under this section must be repaid.

(ii) If a facility ceases to meet the definition of a qualified industrial facility at any time after the facility became operationally complete, as determined by the department, through the end of the calendar year that is seven years after the calendar year that the facility became operationally complete, all or a portion of the credit claimed and contributed must be repaid as determined according to the repayment schedule in RCW 82.63.045(2).

(c) The department must assess interest as provided in chapter 82.32 RCW, but not penalties, on taxes due under this subsection.

(14) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Manufacturing" means (i) those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under this chapter or would be taxed as such if not for an exemption or deduction, or (ii) printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under this chapter if the activity is within the purview of chapter 82.16 RCW.

(b) "Operationally complete" means constructed to the point of being functionally useable for its intended purposes as described in the application required in subsection (8) of this section.

(c) "Qualified industrial facility" means a new building or multiple new buildings located at a single site, that are used primarily for manufacturing. For purposes of this subsection (14)(c):

(i) A building is used primarily for manufacturing if more than fifty percent of the building's useable floor space is used for manufacturing; and

(ii) Floor space used for offices or the storage of raw materials or finished product is deemed to be used for manufacturing if such offices and storage areas are integral to manufacturing occurring elsewhere in the building or in another building at the qualified industrial facility.

NEW SECTION. **Sec.**  This act may be known and cited as the invest in Washington act.

NEW SECTION. **Sec.**  Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

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