S-0278.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5540**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Braun and Wilson, L.

AN ACT Relating to the designation and support of projects of statewide significance; amending RCW 43.157.005, 43.157.010, 43.157.020, 43.157.030, and 82.32.600; adding a new section to chapter 43.157 RCW; adding a new chapter to Title 82 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

**Sec.**  RCW 43.157.005 and 2009 c 421 s 1 are each amended to read as follows:

The legislature declares that certain private investments((~~, such as investments for industrial development, environmental improvement, and innovation activities,~~)) merit special designation and treatment by governmental bodies when they are proposed. Such investments bolster the economies of their locale by creating jobs and ((~~impact~~)) improving the economy ((~~of the state as a whole~~)) at both the local and state levels. It is the intention of the legislature to recognize projects of statewide significance and to encourage local governments and state agencies to expedite their completion.

**Sec.**  RCW 43.157.010 and 2017 c 288 s 2 are each amended to read as follows:

((~~The definitions in this section apply throughout this chapter and RCW 28A.525.166, 43.21A.350, and 90.58.100, unless the context requires otherwise:~~

~~(1) "Applicant" means a person applying to the department for designation of a development project as a project of statewide significance.~~

~~(2) "Aviation biofuels production facility" means a facility primarily for the processing of nonfossil biogenic feedstocks to produce aviation fuels that meet the fuel quality technical standards of the American society for testing materials for aviation fuels and coproducts.~~

~~(3) "Department" means the department of commerce.~~

~~(4) "Manufacturing" shall have the meaning assigned it in RCW 82.62.010.~~

~~(5)(a) "Project of statewide significance" means~~((~~:~~

~~(i) A border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces;~~

~~(ii) A development project that will provide a net environmental benefit;~~

~~(iii) A development project in furtherance of the commercialization of innovations;~~

~~(iv) A private industrial development with private capital investment in manufacturing or research and development;~~

~~(v) An aviation biofuels production facility; or~~

~~(vi) A project designated by the legislature and codified under this chapter.~~

~~(b) To qualify for designation under RCW 43.157.030 as a project of statewide significance:~~

~~(i) The project must be completed after January 1, 2009;~~

~~(ii) The applicant must submit an application to the department for designation as a project of statewide significance to the department of commerce; and~~

~~(iii) Except for an aviation biofuels production facility, the project must have:~~

~~(A) In counties with a population less than or equal to twenty thousand, a capital investment of five million dollars;~~

~~(B) In counties with a population greater than twenty thousand but no more than fifty thousand, a capital investment of ten million dollars;~~

~~(C) In counties with a population greater than fifty thousand but no more than one hundred thousand, a capital investment of fifteen million dollars;~~

~~(D) In counties with a population greater than one hundred thousand but no more than two hundred thousand, a capital investment of twenty million dollars;~~

~~(E) In counties with a population greater than two hundred thousand but no more than four hundred thousand, a capital investment of thirty million dollars;~~

~~(F) In counties with a population greater than four hundred thousand but no more than one million, a capital investment of forty million dollars;~~

~~(G) In counties with a population greater than one million, a capital investment of fifty million dollars;~~

~~(H) In rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of fifty or greater;~~

~~(I) In counties other than rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of one hundred or greater; or~~

~~(J) Been qualified by the director of the department as a project of statewide significance either because:~~

~~(I) The economic circumstances of the county merit the additional assistance such designation will bring;~~

~~(II) The impact on a region due to the size and complexity of the project merits such designation;~~

~~(III) The project resulted from or is in furtherance of innovation activities at a public research institution in the state or is in or resulted from innovation activities within an innovation partnership zone; or~~

~~(IV) The project will provide a net environmental benefit as evidenced by plans for design and construction under green building standards or for the creation of renewable energy technology or components or under other environmental criteria established by the director in consultation with the director of the department of ecology.~~

~~A project may be qualified under this subsection (5)(b)(iii)(J) only after consultation on the availability of staff resources of the office of regulatory assistance.~~

~~(6) "Research and development" shall have the meaning assigned it in RCW 82.62.010.~~)) (1)(a) The definition in this subsection applies throughout this chapter and RCW 28A.525.166, 43.21A.350, and 90.58.100 unless the context clearly requires otherwise.

(b) "Project of statewide significance" means a project designated by the department under this chapter as a project of statewide significance.

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

(a) "Department" means the department of commerce.

(b) "Person" has the same meaning as provided in RCW 82.04.030.

NEW SECTION. **Sec.**  A new section is added to chapter 43.157 RCW to read as follows:

(1) A person must apply to the department for a proposed development project to receive designation as a project of statewide significance.

(2) A project of statewide significance must be completed after January 1, 2020.

(3) A project of statewide significance must be a private development with private capital investment in:

(a) Manufacturing;

(b) Research and development;

(c) A computer data center;

(d) Renewable energy generation; or

(e) Facilities to store and handle goods moved through Washington ports including but not limited to grain elevators, cranes, and cargo handling facilities.

(4) A project of statewide significance must meet the following investment criteria:

(a) In counties with a population less than or equal to twenty thousand, a private capital investment of five million dollars;

(b) In counties with a population greater than twenty thousand but no more than fifty thousand, a private capital investment of ten million dollars;

(c) In counties with a population greater than fifty thousand but no more than one hundred thousand, a private capital investment of fifteen million dollars;

(d) In counties with a population greater than one hundred thousand but no more than two hundred thousand, a private capital investment of twenty million dollars;

(e) In counties with a population greater than two hundred thousand but no more than four hundred thousand, a private capital investment of thirty million dollars;

(f) In counties with a population greater than four hundred thousand but no more than one million, a private capital investment of fifty million dollars;

(g) In counties with a population greater than one million, a private capital investment of one hundred million dollars.

(5) A project of statewide significance must meet the following employment criteria:

(a) In a rural county, have projected full-time employment positions after construction of fifty or greater.

(b) In a county that is not rural, have projected full-time employment positions after construction of two hundred fifty or greater.

(6) The department must develop application materials and other forms to administer this chapter.

(7) If the department determines that a project meets the requirements in this chapter, the department will approve the application and designate the project as a project of statewide significance.

(8) For purposes of this section, the following definitions apply:

(a)(i) "Computer data center" means a facility comprised of one or more buildings constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For purposes of this subsection (8)(a), "server" includes blade and rack-mount servers used in a computer data center exclusively to provide data processing and storage services for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Servers" do not include personal computers. "Data processing and storage services" means providing data storage and backup, providing computer processing power, and hosting enterprise software applications. The term also includes hosting web sites.

(b) "Manufacturing" and "research and development" have the same meaning as provided in RCW 82.62.010.

(c) "Project" means private investment in facilities and equipment that occur within a single area within a five-mile radius.

(d) "Renewable energy generation" means the type of energy generation described in RCW 82.08.962(1)(a).

(e) "Rural county" has the same meaning as provided in RCW 82.14.370.

**Sec.**  RCW 43.157.020 and 2009 c 421 s 3 are each amended to read as follows:

((~~Counties and cities with development projects designated as projects of statewide significance within their jurisdictions shall enter into an agreement with the office of regulatory assistance and the project managers of projects of statewide significance for expediting the completion of projects of statewide significance. The agreement shall require:~~

~~(1) Expedited permit processing for the design and construction of the project;~~

~~(2) Expedited environmental review processing;~~

~~(3) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project;~~

~~(4) Participation of local officials on the team assembled under the requirements of RCW 43.157.030(2)(b); and~~

~~(5) Such other actions or items as are deemed necessary by the office of regulatory assistance for the design and construction of the project.~~)) (1) The office of regulatory assistance must assign a regional assistance lead to each project of statewide significance to:

(a) Lead the state permit scoping and coordinating functions provided for in chapter 43.42 RCW;

(b) Assemble a team of local, state, and, when possible, federal agency representatives to work with the project proponents to help meet the planning, permitting, and development needs of the project. The team must include those responsible for planning, permitting and licensing, infrastructure development, workforce development services, transportation services, and the provision of utilities; and

(c) Work with each team member as they may request to help expedite decision making.

(2) State agencies must enter into agreements with the office of regulatory assistance and the project proponents as required by the fully coordinated permit process set forth in RCW 43.42.060. In cases where a project proponent enters into a cost-reimbursement agreement with an agency and with the office of regulatory assistance, the state agency must expedite decision making related to the project.

**Sec.**  RCW 43.157.030 and 2017 c 288 s 3 are each amended to read as follows:

(1) ((~~The department of commerce shall:~~

~~(a) Develop an application for designation of development projects as projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed project of statewide significance within its boundaries. No designation of a project as a project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of a project of statewide significance. The development project proponents may provide the funding necessary for the jurisdiction to hire the professional staff that will be required to so expedite. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and~~

~~(b) Designate a development project as a project of statewide significance if the department determines:~~

~~(i) After review of the application under criteria adopted by rule, the development project will provide significant economic benefit to the local or state economy, or both, the project is aligned with the state's comprehensive plan for economic development under RCW 43.162.020, and, by its designation, the project will not prevent equal consideration of all categories of proposals under RCW 43.157.010; and~~

~~(ii) The development project meets or will meet the requirements of RCW 43.157.010 regarding designation as a project of statewide significance.~~

~~(2) Any project designated by the legislature and codified in this chapter is not subject to the application requirements set out in subsection (1) of this section.~~

~~(3) The office of regulatory assistance shall assign a project facilitator or coordinator to each project of statewide significance to:~~

~~(a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW;~~

~~(b) Assemble a team of state and local government and private officials to help meet the planning, permitting, and development needs of each project, which team shall include those responsible for planning, permitting and licensing, infrastructure development, workforce development services including higher education, transportation services, and the provision of utilities; and~~

~~(c) Work with each team member to expedite their actions in furtherance of the project.~~)) An application for designation as a project of statewide significance must be accompanied by a letter from the jurisdiction that will have primary responsibility over the local permitting process for the proposed project. The letter must state that the jurisdiction has or will hire the professional staff to expedite local decision making for the project. The proponents of the proposed project may provide the funding necessary for the jurisdiction to hire or replace the professional staff necessary to expedite the local decision-making process. The letter from the local jurisdiction must not provide or represent a guarantee of project approval and must reserve to the jurisdiction authority to deny or require modification to proposed projects of statewide significance. The letter from the local jurisdiction must also include agreement to work with the office of regulatory assistance on the team assembled pursuant to RCW 43.157.020 to help expedite decision making for the project.

(2) For purposes of this section, "local jurisdiction" means a city or county.

NEW SECTION. **Sec.**  (1) Subject to the requirements and limits in this section, a person that invests in a qualifying project may claim a credit against the tax imposed in chapter 82.04 or 82.16 RCW equal to five percent of the lesser of the projected or actual qualified initial capital costs of the qualifying project.

(2)(a) A person seeking the credit under this section must apply to the department of commerce for approval to claim the credit in conjunction with seeking designation of a project as a project of statewide significance under chapter 43.157 RCW.

(b) The department of commerce must notify the department of each application approved under (a) of this subsection. The notification must include the projected qualified initial capital costs, the estimated credit amount, the projected date for initiation of construction of the qualifying project, the number of full-time employees employed by the person in this state, and other information as the department may require.

(c) The credit will apply only to projects for which the initiation of construction commences after the effective date of this section.

(d) No credit may be claimed against taxes accrued under chapter 82.04 or 82.16 RCW before the effective date of this section.

(e) The credit must be claimed on a return filed electronically with the department using the department's online tax filing service, unless the department grants a waiver for good cause shown. For purposes of this subsection (2)(e), "good cause" has the same meaning as in RCW 82.32.080(8)(a)(i), (ii), (iii), and (vi), and (b).

(f) The total credit allowed under this section for a person may not exceed twenty-five million dollars.

(g) No more than twenty percent of the credit earned by a person may be claimed in any fiscal year.

(h) No more than twenty-five percent of the total credit approved under subsection (3)(c) of this section may be earned by projects located in counties with a population greater than one million.

(i) Unused credit may be carried forward until used. Refunds may not be granted in the place of a credit.

(3)(a) Credits are available on a first-in-time basis based on the time the application for credit was received by the department of commerce.

(b) The department must approve the amount of credit available for each person whose application for credit is approved by the department of commerce and notify such person of the amount of approved credit.

(c) The total amount of credit that may be approved by the department may not exceed one hundred million dollars. If this limitation is reached, the department must notify the department of commerce and the legislature that the credit provided by this section is no longer available.

(4) Approved credit may not be claimed before the qualifying project is certified by the department as being operationally complete.

(5) Before approved credit may be claimed, a person approved for the credit must have:

(a) Met the applicable investment criterion in section 3(4) of this act, with respect to the qualifying project;

(b) Filled at least two hundred fifty full-time employment positions at the qualifying project or at least fifty full-time employment positions at the qualifying project if the qualifying project is located in a rural county; and

(c) Increased the number of full-time employees employed by the person in this state by at least two hundred fifty full-time employees or at least fifty full-time employees if the qualifying project is located in a rural county. In determining whether the person increased employment in this state by the requisite number of employees, current employment is measured against the number of full-time employees employed by the person in this state at the time the qualifying business applied to the department of commerce for approval to claim the credit under this section.

(6) If a person fails to maintain the employment levels required in subsection (5)(b) and (c) of this section for the entire calendar year in which the person claims approved credit under this section, the person must repay the amount of credit claimed for that year. Interest, but not penalties, applies to taxes that must be repaid under this subsection. Interest is imposed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(7) Credit may not be claimed for expenditures for which a credit is claimed under any other provision of this title.

(8) No credit may be claimed against the taxes imposed in chapters 82.04 and 82.16 RCW for the same qualified initial capital costs.

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

(a) "Department" means the department of revenue.

(b) "Full time" means a normal workweek of at least thirty-five hours.

(c) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of any part of the qualifying project. "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of any building that is part of the qualifying project.

(d) "Operationally complete" means the date the qualifying project is constructed or improved to the point of being functionally useable for all of its intended purposes.

(e) "Qualified initial capital costs" means the cost of property deductible under 26 U.S.C. Secs. 167 or 179 of the federal internal revenue code of 1986 as amended as of July 1, 2019, including the labor and services rendered in the planning, installation, and construction of the property, and purchased before the project is operationally complete. With respect to lessees, "qualified initial capital costs" also includes, for a capital lease, the amount recorded as an asset and an obligation by the lessee. "Qualified initial capital costs" do not include the cost of land.

(f) "Qualifying project" means a project that has been designated as a project of statewide significance by the department of commerce under chapter 43.157 RCW.

NEW SECTION. **Sec.**  (1) A person claiming the credit under section 6 of this act must report as required under RCW 82.32.534 and provide such additional information as the department may require to determine whether the person was eligible to claim the credit.

(2) If a person is required to repay credited taxes under section 6(6) of this act, the person is not required to file an annual tax performance report as provided in subsection (1) of this section for the calendar year for which the person is required to repay such taxes.

**Sec.**  RCW 82.32.600 and 2017 c 135 s 4 are each amended to read as follows:

(1) Persons required to file annual tax performance reports under RCW 82.32.534 or section 9 of this act must electronically file with the department all reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown.

NEW SECTION. **Sec.**  The department of revenue, in compliance with RCW 43.01.036, must submit a report to the finance committee of the house of representatives and the ways and means committee of the senate within one year after reaching the credit limitation created under section 6 of this act. The report must measure the effect of the credit on job creation, capital investment, net environmental impact, the commercialization of innovative projects, and such other factors as the department deems necessary to determine the effectiveness and use of credit funds.

NEW SECTION. **Sec.**  The employment security department must share, with the department, available information concerning the number and location of employees employed by persons claiming the credit provided in section 6 of this act.

NEW SECTION. **Sec.**  Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. **Sec.**  Sections 6, 7, 10, and 11 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  Sections 6 through 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**--- END ---**