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**SENATE BILL 6322**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senators Skratek, Bluechel, Sheldon, Williams, M. Rasmussen, Snyder and Winsley

Read first time 01/19/94. Referred to Committee on Trade, Technology & Economic Development.

1 AN ACT Relating to industrial and commercial development; amending  
2 RCW 43.163.010, 43.163.070, and 43.163.120; adding a new section to  
3 chapter 43.163 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is found and declared that there exists  
6 in the state a great and growing need for industrial and commercial  
7 development and activity to provide and maintain employment and tax  
8 revenues; that assistance and encouragement of industrial and  
9 commercial development to provide and maintain the employment and  
10 revenues is an important function of the state; that the availability  
11 of financial assistance is an important inducement to industrial and  
12 commercial enterprises to remain or locate in this state; that there  
13 exists in the state a serious shortage of venture capital to promote  
14 the development and exploitation of invention and products; that this  
15 shortage has resulted and will result in a serious decrease in the  
16 development of new business enterprise and job opportunities in  
17 Washington state; and further, that providing state financial  
18 assistance for the development of products, innovation, and invention  
19 for industry in this state will assist in diversifying the economy of

1 our state which has been significantly impacted by downturns in  
2 defense-related, timber-related, and fisheries-related industries; and  
3 further that the assistance will result in the creation of new products  
4 and industry in this state, resulting in increased employment and  
5 public revenues over time; and therefore the necessity in the public  
6 interest and for the public benefit and good for the provisions of  
7 chapter ..., Laws of 1994 (this act) is hereby declared as a matter of  
8 legislative determination.

9       **Sec. 2.** RCW 43.163.010 and 1989 c 279 s 2 are each amended to read  
10 as follows:

11       As used in this chapter, the following words and terms have the  
12 following meanings, unless the context requires otherwise:

13       (1) "Authority" means the Washington economic development finance  
14 authority created under RCW 43.163.020 or any board, body, commission,  
15 department or officer succeeding to the principal functions of the  
16 authority or to whom the powers conferred upon the authority shall be  
17 given by law;

18       (2) "Bonds" means any bonds, notes, debentures, interim  
19 certificates, conditional sales or lease financing agreements, lines of  
20 credit, forward purchase agreements, investment agreements, and other  
21 banking or financial arrangements, guaranties, or other obligations  
22 issued by or entered into by the authority. Such bonds may be issued  
23 on either a tax-exempt or taxable basis;

24       (3) "Borrower" means one or more public or private persons or  
25 entities acting as lessee, purchaser, mortgagor, or borrower who has  
26 obtained or is seeking to obtain financing either from the authority or  
27 from an eligible banking organization that has obtained or is seeking  
28 to obtain funds from the authority to finance a project. A borrower  
29 may include a party who transfers the right of use and occupancy to  
30 another party by lease, sublease or otherwise, or a party who is  
31 seeking or has obtained a financial guaranty from the authority;

32       (4) "Eligible banking organization" means any organization subject  
33 to regulation by the state (~~supervisor of banking or the state~~  
34 ~~supervisor of savings and loans, any national bank, federal savings and~~  
35 ~~loan association~~) director of the department of financial  
36 institutions, and federal credit union located within this state;

37       (5) "Eligible export transaction" means any preexport or export  
38 activity by a person or entity located in the state of Washington

1 involving a sale for export and product sale which, in the judgment of  
2 the authority: (a) Will create or maintain employment in the state of  
3 Washington, (b) will obtain a material percent of its value from  
4 manufactured goods or services made, processed or occurring in  
5 Washington, and (c) could not otherwise obtain financing on reasonable  
6 terms from an eligible banking organization;

7 (6) "Eligible farmer" means any person who is a resident of the  
8 state of Washington and whose specific acreage qualifying for receipts  
9 from the federal department of agriculture under its conservation  
10 reserve program is within the state of Washington;

11 (7) "Eligible person" means an individual, partnership,  
12 corporation, or joint venture carrying on business, or proposing to  
13 carry on business within the state and is seeking financial assistance  
14 under section 3 of this act.

15 (8) "Financial aid" means the infusion of risk capital to persons  
16 for use in the development and exploitation of specific inventions and  
17 products.

18 (9) "Financing document" means an instrument executed by the  
19 authority and one or more persons or entities pertaining to the  
20 issuance of or security for bonds, or the application of the proceeds  
21 of bonds or other funds of, or payable to, the authority. A financing  
22 document may include, but need not be limited to, a lease, installment  
23 sale agreement, conditional sale agreement, mortgage, loan agreement,  
24 trust agreement or indenture, security agreement, letter or line of  
25 credit, reimbursement agreement, insurance policy, guaranty agreement,  
26 or currency or interest rate swap agreement. A financing document also  
27 may be an agreement between the authority and an eligible banking  
28 organization which has agreed to make a loan to a borrower;

29 ((+8)) (10) "Plan" means the general plan of economic development  
30 finance objectives developed and adopted by the authority, and updated  
31 from time to time, as required under RCW 43.163.090.

32 (11) "Product" means a product, device, technique, or process that  
33 is or may be exploitable commercially. The term shall not refer to  
34 pure research but shall be construed to apply to products, devices,  
35 techniques, or processes that have advanced beyond the theoretic stage  
36 and are readily capable of being, or have been, reduced to practice.

37 (12) "Venture" means, without limitation, a contractual arrangement  
38 with an eligible person whereby the authority obtains rights from or in

1 an invention or product or proceeds therefrom in exchange for the  
2 granting of financial aid to the person.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.163 RCW  
4 to read as follows:

5 The authority is authorized to develop and conduct a program that  
6 will stimulate and encourage the development of new products within  
7 Washington state by the infusion of financial aid for invention and  
8 innovation in situations in which the financial aid would not otherwise  
9 be reasonably available from commercial sources.

10 (1) For the purposes of this program, the authority shall have the  
11 following powers and duties:

12 (a) To enter into venture agreements with eligible persons doing  
13 business in Washington state, upon terms and on conditions as are  
14 consistent with the purposes of this chapter, for the advancement of  
15 financial aid to the persons for the development of specific products,  
16 procedures, and techniques, to be developed and produced in this state,  
17 and to condition the agreements upon contractual assurances that the  
18 benefits of increasing or maintaining employment and tax revenues shall  
19 remain in this state and accrue to it;

20 (b) Own, possess, and take license in, patents, copyrights, and  
21 proprietary processes and negotiate and enter into contracts and  
22 establish charges for the use of the patents, copyrights, and  
23 proprietary processes when the patents and licenses for products result  
24 from research financed by the authority;

25 (c) Negotiate royalty payments to the authority on patents and  
26 licenses for products arising in the course of research financed by the  
27 authority;

28 (d) Negotiate and enter into other types of contracts with eligible  
29 persons which assure a return on an investment made by the authority;  
30 provided that the contracts are consistent with the state's  
31 constitution;

32 (e) Encourage and provide technical assistance to eligible persons  
33 in the process of developing new products;

34 (f) Refer eligible persons to researchers or laboratories for the  
35 purpose of testing and evaluating new products, processes, or  
36 innovations; and

37 (g) To the extent permitted under its contract with eligible  
38 persons, to consent to a termination, modification, forgiveness, or

1 other change of a term of a contractual right, payment, royalty,  
2 contract, or agreement of any kind to which the authority is a party.

3 (2) Eligible persons seeking financial aid under this program shall  
4 forward an application, together with an application fee prescribed by  
5 rule, to the authority. An investigation and report concerning the  
6 advisability of approving an application for financial aid shall be  
7 completed by the staff of the authority. The investigation and report  
8 shall include, but shall not be limited to, facts about the company  
9 under consideration as its history, wage standards, job opportunities,  
10 stability of employment, past and present financial condition and  
11 structure, pro forma income statements, present and future markets and  
12 prospects, integrity of management as well as the feasibility of the  
13 proposed product and invention to be granted financial aid, including  
14 the state of development of the product as well as the likelihood of  
15 its commercial feasibility. After receipt and consideration of the  
16 report set out in this subsection and after other action as is deemed  
17 appropriate, the application shall be approved or denied by the  
18 authority. The applicant shall be promptly notified of action by the  
19 authority. In making the decision as to approval or denial of an  
20 application, priority shall be given to those persons operating or  
21 planning to operate businesses of special importance to Washington's  
22 economy, including, but not limited to: (a) Existing resource-based  
23 industries of agriculture, forestry, and fisheries; (b) existing  
24 advanced technology industries of electronics, computer and instrument  
25 manufacturing, computer software, and information and design; and (c)  
26 emerging industries of environmental technology, biotechnology,  
27 biomedical sciences, materials sciences and optics.

28 (3) The director of the department of community, trade, and  
29 economic development may create an advisory committee to assist in the  
30 evaluation and selection of projects seeking financing under this  
31 program. The committee members shall be knowledgeable and have  
32 favorable reputations for skill, knowledge, and experience in the areas  
33 of the development of technological invention. Members shall receive  
34 no compensation for the performance of their duties under this section,  
35 but shall be reimbursed for necessary expenses incurred in the  
36 performance thereof and shall be reimbursed for travel expenses as  
37 provided in RCW 43.03.050 and 43.03.060.

1       **Sec. 4.** RCW 43.163.070 and 1990 c 53 s 4 are each amended to read  
2 as follows:

3       The authority may use any funds legally available to it for any  
4 purpose specifically authorized by this chapter, or for otherwise  
5 improving economic development in this state by assisting businesses  
6 and farm enterprises that do not have access to capital at terms and  
7 rates comparable to large corporations due to the location of the  
8 business, the size of the business, the lack of financial expertise, or  
9 other appropriate reasons(~~(:—PROVIDED, That)~~). However, no funds of  
10 the state shall be used for such purposes; except that funds of the  
11 state may be used to support the administrative functions of the  
12 program created under section 3 of this act.

13       **Sec. 5.** RCW 43.163.120 and 1989 c 279 s 13 are each amended to  
14 read as follows:

15       The authority shall receive no appropriation of state funds; except  
16 that funds of the state may be used to support the administrative  
17 functions of the program created under section 3 of this act. The  
18 department of community, trade, and economic development shall provide  
19 staff to the authority, to the extent permitted by law, to enable the  
20 authority to accomplish its purposes; the staff from the department of  
21 community, trade, and economic development may assist the authority in  
22 organizing itself and in designing programs, but shall not be involved  
23 in the issuance of bonds or in making credit decisions regarding  
24 financing provided to borrowers by the authority. The authority shall  
25 report each December on its activities to the house trade and economic  
26 development committee and to the senate economic development and labor  
27 committee.

28       NEW SECTION.       **Sec. 6.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

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