
SUBSTITUTE SENATE BILL 6752

State of Washington

60th Legislature

2008 Regular Session

By Senate Economic Development, Trade & Management (originally sponsored by Senators Kastama, Shin, and Hatfield)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to providing new market development tax credits;
2 amending RCW 48.12.020 and 82.32.010; reenacting and amending RCW
3 82.32.590 and 82.32.600; adding new sections to chapter 48.14 RCW;
4 adding a new section to chapter 82.32 RCW; adding a new chapter to
5 Title 82 RCW; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Applicable percentage" means zero percent for each of the
10 first two credit allowance dates, twelve percent for the third and
11 fourth credit allowance dates, and fifteen percent for the fifth credit
12 allowance date.

13 (2) "Credit allowance date" means with respect to any qualified
14 equity investment:

15 (a) The date on which the investment is initially made; and

16 (b) Each of the six anniversary dates of such date thereafter.

17 (3) "Department" means the department of revenue.

18 (4) "Direct tracing" means the tracking, by generally accepted

1 accounting principals, of the proceeds of qualified equity investments
2 into qualified low-income community investments.

3 (5) "Long-term debt security" means any debt instrument issued by
4 a qualified community development entity, at par value or a premium,
5 with an original maturity date of at least seven years from the date of
6 its issuance, with no acceleration of repayment, amortization, or
7 prepayment features prior to its original maturity date, and with no
8 distribution, payment, or interest features related to the
9 profitability of the qualified community development entity or the
10 performance of the qualified community development entity's investment
11 portfolio. The holder of a long-term debt security shall not be
12 limited in the ability to accelerate payments on the debt instrument in
13 situations where the issuer has defaulted on covenants designed to
14 ensure compliance with this act or section 45D of the internal revenue
15 code of 1986, as amended.

16 (6) "Person" has the meaning given in RCW 82.04.030.

17 (7) "Purchase price" means the amount paid to the issuer of a
18 qualified equity investment for the qualified equity investment.

19 (8) "Qualified active low-income community business" has the same
20 meaning as provided in section 45D of the internal revenue code of
21 1986, as amended, but any business that derives or projects to derive
22 fifteen percent or more of its annual revenue from the rental or sale
23 of real estate is not a qualified active low-income community business.

24 (9) "Qualified community development entity" has the same meaning
25 as provided in section 45D of the internal revenue code of 1986, as
26 amended. The entity must have entered into an allocation agreement
27 with the community development financial institutions fund of the
28 United States treasury department with respect to credits authorized by
29 section 45D of the internal revenue code of 1986, as amended. The
30 allocation agreement must include the state of Washington within the
31 defined service area.

32 (10) "Qualified equity investment" means any equity investment in,
33 or long-term debt security issued by, a qualified community development
34 entity that:

35 (a) Is acquired after the effective date of this section as an
36 original issuance solely in exchange for cash;

37 (b) Has at least eighty-five percent of its cash purchase price

1 used by the issuer to make qualified low-income community investments;
2 and

3 (c) Is designated by the issuer as a qualified equity investment
4 under this subsection and is certified by the department as meeting the
5 specifications contained in subsection (5) of this section.

6 "Qualified equity investment" includes any otherwise qualified
7 equity investment that does not qualify under (a) of this subsection if
8 such an investment was a qualified equity investment in the hands of a
9 prior holder.

10 (11) "Qualified low-income community investment" means any capital
11 or equity investment in, or loan to, any qualified active low-income
12 community business. With respect to any one qualified active
13 low-income community business, the maximum amount of qualified
14 low-income community investments made in that business, on a collective
15 basis with all of its affiliates, is five million dollars whether
16 issued to one or several qualified community development entities.

17 (12) "Recipient" means a person receiving a tax credit under this
18 chapter.

19 NEW SECTION. **Sec. 2.** (1) Subject to the limitations in this
20 chapter, a person making a qualified equity investment is allowed a
21 credit against the tax due under chapter 82.04 RCW during the taxable
22 year including the credit allowance date.

23 (2) The credit is equal to the applicable percentage multiplied by
24 the purchase price paid to the issuer of the qualified equity
25 investment.

26 (3) The amount of the credit allowed may not exceed the amount of
27 the recipient's state tax liability for the tax year for which the tax
28 credit is claimed.

29 NEW SECTION. **Sec. 3.** A credit claimed under this section is not
30 refundable or saleable on the open market. Credits earned by a
31 partnership, limited liability company, S-corporation, or other
32 pass-through entity may be allocated to the partners, members, or
33 shareholders of such an entity for their direct use in accordance with
34 any agreement among the partners, members, or shareholders. Any amount
35 of credit that a recipient is prohibited from claiming in a taxable
36 year may be carried forward for five subsequent taxable years.

1 NEW SECTION. **Sec. 4.** The department shall limit the monetary
2 amount of qualified equity investments permitted under this chapter to
3 a level necessary to limit tax credit utilization at no more than seven
4 million five hundred thousand dollars of tax credits in any fiscal
5 year. This limitation on qualified equity investments is based on the
6 anticipated utilization of credits without regard to the potential for
7 recipients to carry forward credits to later tax years.

8 NEW SECTION. **Sec. 5.** The issuer of a qualified equity investment
9 shall certify to the department the anticipated dollar amount of the
10 investments to be made in this state during the first twelve-month
11 period following the initial credit allowance date. If on the second
12 credit allowance date, the actual dollar amount of the investments is
13 different than the amount estimated, the department shall adjust the
14 credits arising on the second allowance date to account for such a
15 difference.

16 NEW SECTION. **Sec. 6.** (1) When the proceeds of a qualified equity
17 investment are invested completely in qualified low-income community
18 investments in Washington state, the purchase price, for the purpose of
19 calculating the credit created by this chapter, is one hundred percent
20 of the qualified equity investment, regardless of the location of
21 investments made with the proceeds of other qualified equity
22 investments issued by the same community development entity.

23 (2) To the extent a portion of a qualified equity investment is not
24 invested in Washington state, the purchase price must be reduced by the
25 same ratio without regard to the location of investments made with
26 proceeds of other qualified equity investments issued by the same
27 community development entity. The burden is on the community
28 development entity to establish the extent to which the qualified
29 equity investments are fully invested in Washington state, either by
30 establishing that the community development entity itself invests
31 exclusively in Washington state, or otherwise establishing, through
32 direct tracing, the portion of a qualified equity investment invested
33 solely in Washington state.

34 NEW SECTION. **Sec. 7.** The department shall recapture the credit
35 allowed under this section when:

1 (1) Any amount of the federal tax credit available with respect to
2 a qualified equity investment that is eligible for a tax credit under
3 this section is recaptured under section 45D of the internal revenue
4 code of 1986, as amended. In such a case, the department's recapture
5 shall be proportionate to the federal recapture with respect to such a
6 qualified equity investment; or

7 (2) Except under section 8 of this act, the issuer redeems or makes
8 principal repayment with respect to a qualified equity investment prior
9 to the seventh anniversary of the issuance of the qualified equity
10 investment. In such a case, the department's recapture shall be
11 proportionate to the amount of the redemption or repayment with respect
12 to such a qualified equity investment.

13 NEW SECTION. **Sec. 8.** Notwithstanding section 7(2) of this act, an
14 investment is considered held by an issuer even when the investment has
15 been sold or repaid, if the issuer reinvests an amount equal to the
16 capital returned to or recovered by the issuer from the original
17 investment, exclusive of any profits realized, in another qualified
18 low-income community investment within twelve months of the receipt of
19 the capital. An issuer is not required to reinvest capital returned
20 from qualified low-income community investments after the sixth
21 anniversary of the issuance of the qualified equity investment, the
22 proceeds of which were used to make the qualified low-income community
23 investment, and the qualified low-income community investment is
24 considered held by the issuer through the seventh anniversary of the
25 qualified equity investment's issuance.

26 NEW SECTION. **Sec. 9.** The department may adopt rules to implement
27 this chapter and to administer the allocation of tax credits issued for
28 qualified equity investments, which the department shall allocate on a
29 first-come, first-serve basis.

30 NEW SECTION. **Sec. 10.** This chapter does not preclude a taxpayer
31 who makes a qualified equity investment prior to the expiration of
32 authority to make qualified equity investments from claiming tax
33 credits relating to such a qualified equity investment for each
34 applicable credit allowance date.

1 **Sec. 11.** RCW 48.12.020 and 1982 c 218 s 1 are each amended to read
2 as follows:

3 In addition to assets impliedly excluded under RCW 48.12.010, the
4 following expressly shall not be allowed as assets in any determination
5 of the financial condition of an insurer:

6 (1) Goodwill, except in accordance with regulations prescribed by
7 the commissioner, trade names, agency plants and other like intangible
8 assets.

9 (2) Prepaid or deferred charges for expenses and commissions paid
10 by the insurer.

11 (3) Advances to officers (other than policy loans or loans made
12 pursuant to RCW 48.07.130), whether secured or not, and advances to
13 employees, agents and other persons on personal security only.

14 (4) Stock of such insurer, owned by it, or any equity therein or
15 loans secured thereby, or any proportionate interest in such stock
16 through the ownership by such insurer of an interest in another firm,
17 corporation or business unit.

18 (5) Furniture, furnishings, fixtures, safes, equipment, vehicles,
19 library, stationery, literature, and supplies; except, electronic and
20 mechanical machines authorized by subsection (11) of RCW 48.12.010, or
21 such personal property as the insurer is permitted to hold pursuant to
22 paragraph (e) of subsection (2) of RCW 48.13.160, or which is acquired
23 through foreclosure of chattel mortgages acquired pursuant to RCW
24 48.13.150, or which is reasonably necessary for the maintenance and
25 operation of real estate lawfully acquired and held by the insurer
26 other than real estate used by it for home office, branch office, and
27 similar purposes.

28 (6) The amount, if any, by which the aggregate book value of
29 investments as carried in the ledger assets of the insurer exceeds the
30 aggregate value thereof as determined under this code.

31 (7) Any debt instrument and any equity investment in or long-term
32 debt security issued by a qualified community development entity as
33 defined in section 1 of this act.

34 (8) Any capital or equity investment in, or loan to, any qualified
35 active low-income community business.

36 **NEW SECTION. Sec. 12.** A new section is added to chapter 48.14 RCW
37 to read as follows:

1 (1) A qualified investor who is an insurer as defined under RCW
2 48.01.050 with tax liabilities in Washington state under RCW 48.14.020
3 may claim a credit against the investor's state premium tax liability
4 for qualified equity investments, subject to chapter 82.-- RCW
5 (sections 1 through 10 of this act) and this chapter.

6 (2) The definitions in section 1 of this act apply to this section
7 and sections 13 through 15 of this act.

8 (3) A qualified investor taking the state premium tax credit under
9 this section is subject to all the requirements of chapter 82.32 RCW.
10 The state premium tax credit, which may be applied against state
11 premium tax liability in any one tax year, may not exceed the state
12 premium tax liability of the qualified investor for that tax year. Any
13 amount of credit that a recipient is prohibited from claiming in a
14 taxable year may be carried forward for five subsequent taxable years.
15 The investment made by a qualified investor under this section is
16 subject to chapters 48.12 and 48.13 RCW.

17 (4) A qualified investor claiming a state premium tax credit
18 against state premium tax liability earned through a qualified equity
19 investment is not required to pay any additional retaliatory tax levied
20 under RCW 48.14.040 as a result of claiming that state premium tax
21 credit.

22 (5) A qualified investor is not required to reduce the amount of
23 tax subject to the state premium tax liability included by the
24 qualified investor in connection with rate making for any insurance
25 contract written in Washington because of a reduction in the qualified
26 investor's tax liability based on the state premium tax credit allowed
27 under this section.

28 (6) A qualified investor, or a subsequent transferee, may only
29 transfer tax credits earned under this section to an affiliate, unless
30 the state premium tax liability of the qualified investor in the year
31 immediately preceding the proposed transfer is less than seventy-five
32 percent of the qualified investor's state premium tax liability for the
33 tax year in which it earned the vested premium tax credit. No
34 qualified investor may make more than one transfer in any calendar
35 year. Any transfer or sale does not affect the time schedule for
36 claiming the state premium tax credits. Any state premium tax credits
37 recaptured under this section are the liability of the qualified
38 investor that actually claimed the state premium tax credits. All

1 transfers of state premium tax credits must be tracked and reported,
2 using a form approved by the commissioner, to ensure the proper
3 collection of state premium taxes.

4 (7) If the taxes paid by a qualified investor with respect to its
5 state premium tax liability constitute a credit against any other tax
6 which is imposed by Washington state, the qualified investor's credit
7 against the other tax is to be reduced by virtue of the reduction in
8 the qualified investor's tax liability based on the state premium tax
9 credit allowed under this section.

10 NEW SECTION. **Sec. 13.** A new section is added to chapter 48.14 RCW
11 to read as follows:

12 An insurance company or affiliate of an insurance company may not,
13 directly or indirectly:

14 (1) Beneficially own, whether through rights, options, convertible
15 interests, or otherwise, nine percent or more of the voting securities
16 or other voting ownership interest of a qualified community development
17 entity through which it makes a qualified low-income community
18 investment;

19 (2) Manage a qualified community development entity through which
20 it makes a qualified low-income community investment; or

21 (3) Control the direction of investments for an investment made
22 through a qualified community development entity.

23 NEW SECTION. **Sec. 14.** A new section is added to chapter 48.14 RCW
24 to read as follows:

25 The commissioner shall limit the monetary amount of qualified
26 equity investments permitted under this chapter to a level necessary to
27 limit premium tax credit utilization at no more than seven million five
28 hundred thousand dollars of tax credits in any fiscal year. This
29 limitation on qualified equity investments is based on the anticipated
30 utilization of credits without regard to the potential for recipients
31 to carry forward credits to later tax years.

32 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.14 RCW
33 to read as follows:

34 The commissioner may adopt rules to implement this chapter and to

1 administer the allocation of premium tax credits issued for qualified
2 equity investments, which the commissioner shall allocate on a
3 first-come, first-serve basis.

4 **Sec. 16.** RCW 82.32.010 and 1998 c 304 s 12 are each amended to
5 read as follows:

6 The provisions of this chapter shall apply with respect to the
7 taxes imposed under chapters 82.04 through 82.14 RCW, under RCW
8 82.14B.030(3), under chapters 82.16 through 82.29A RCW (~~of this~~
9 ~~title~~)), under chapter 84.33 RCW, under chapter 82.-- RCW (sections 1
10 through 10 of this act), under sections 12 through 15 of this act, and
11 under other titles, chapters, and sections in such manner and to such
12 extent as indicated in each such title, chapter, or section.

13 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.32 RCW
14 to read as follows:

15 (1) An investor who claims an exemption under chapter 82.-- RCW
16 (sections 1 through 10 of this act) or sections 12 through 15 of this
17 act shall make an annual report to the department detailing employment,
18 wages, and employer-provided health and retirement benefits per job.
19 The report must not include names of employees. The report must also
20 detail employment by the total number of full-time, part-time, and
21 temporary positions. The first report filed under this section must
22 include employment, wage, and benefit information for the twelve-month
23 period immediately before the first use of the tax exemption. The
24 report is due by March 31st following any year in which the tax
25 exemption is taken. This information is not subject to the
26 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
27 public upon request.

28 (2) When an investor fails to submit an annual report under
29 subsection (1) of this section, the department shall declare the amount
30 of taxes exempted for that year immediately due and payable. Excise
31 taxes payable under this subsection are subject to interest under this
32 chapter. Information concerning a failure to report under this
33 subsection is exempt from the confidentiality provisions of RCW
34 82.32.330 and may be disclosed upon request.

1 **Sec. 18.** RCW 82.32.590 and 2006 c 354 s 17, 2006 c 300 s 10, 2006
2 c 177 s 8, 2006 c 112 s 7, and 2006 c 84 s 7 are each reenacted and
3 amended to read as follows:

4 (1) If the department finds that the failure of a taxpayer to file
5 an annual survey or annual report under RCW 82.04.4452, 82.32.5351,
6 82.32.650, 82.32.635, 82.32.640, 82.32.630, 82.32.610, (~~or~~)
7 82.74.040, or section 17 of this act by the due date was the result of
8 circumstances beyond the control of the taxpayer, the department shall
9 extend the time for filing the survey or report. Such extension shall
10 be for a period of thirty days from the date the department issues its
11 written notification to the taxpayer that it qualifies for an extension
12 under this section. The department may grant additional extensions as
13 it deems proper.

14 (2) In making a determination whether the failure of a taxpayer to
15 file an annual survey or annual report by the due date was the result
16 of circumstances beyond the control of the taxpayer, the department
17 shall be guided by rules adopted by the department for the waiver or
18 cancellation of penalties when the underpayment or untimely payment of
19 any tax was due to circumstances beyond the control of the taxpayer.

20 **Sec. 19.** RCW 82.32.600 and 2007 c 54 s 23 and 2007 c 54 s 22 are
21 each reenacted and amended to read as follows:

22 (1) Persons required to file annual surveys or annual reports under
23 RCW 82.04.4452 (~~or~~), 82.32.5351, 82.32.610, 82.32.630, 82.32.635,
24 82.32.640, (~~or~~) 82.74.040, or section 17 of this act must
25 electronically file with the department all surveys, reports, returns,
26 and any other forms or information the department requires in an
27 electronic format as provided or approved by the department. As used
28 in this section, "returns" has the same meaning as "return" in RCW
29 82.32.050.

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

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

1 NEW SECTION. **Sec. 20.** Sections 1 through 10 of this act
2 constitute a new chapter in Title 82 RCW.

3 NEW SECTION. **Sec. 21.** This act expires July 1, 2012.

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