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HOUSE BILL 1165

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State of Washington

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2011 Regular Session

By Representatives Lias, Kenney, Stanford, Ryu, Maxwell, Goodman, Eddy, Finn, Sells, Moscoso, Miloscia, Rolfes, and Appleton

Read first time 01/13/11. Referred to Committee on Community Development & Housing.

1 AN ACT Relating to providing support for small business; amending  
2 RCW 82.32.105 and 43.330.060; adding a new section to chapter 43.330  
3 RCW; adding a new section to chapter 82.04 RCW; adding a new section to  
4 chapter 19.02 RCW; adding a new section to chapter 82.32 RCW; adding a  
5 new chapter to Title 82 RCW; creating new sections; and repealing RCW  
6 43.131.401 and 43.131.402.

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

8 **Intent**

9 NEW SECTION. **Sec. 1.** The legislature finds that: (1) Small  
10 businesses are critical to Washington's economic recovery and strength;  
11 (2) many small businesses are experiencing financial hardship because  
12 of the economic downturn in the state and nation; and (3) small  
13 businesses start-up and expansion will have a favorable impact on  
14 Washington's economy by creating jobs, expanding tax revenues, and  
15 helping Washington compete in today's global marketplace. Therefore,  
16 the legislature intends to promote entrepreneurship and investment in  
17 the state's small businesses.

1                                   **The Small Business Loan Guarantee Program**

2           NEW SECTION.   **Sec. 2.** A new section is added to chapter 43.330 RCW  
3 to read as follows:

4           (1) Subject to the availability of amounts appropriated for this  
5 specific purpose, the department, in collaboration with the Washington  
6 economic development finance authority, small business development  
7 center, and department of financial institutions, and in consultation  
8 with the United States small business administration and other  
9 organizations with business financing programs or expertise, must  
10 develop and offer a small business loan or loan guarantee program of up  
11 to one hundred million dollars. The purpose of the program is to  
12 provide access to capital for qualified small businesses which are  
13 unable to obtain funding from private commercial lenders on  
14 commercially reasonable terms or to qualify for federal small business  
15 administration loans. Loans made through the program may be for  
16 general business purposes, including working capital, machinery and  
17 equipment, furniture and fixtures, land and building, including  
18 purchase, renovation, and new construction, leasehold improvements,  
19 and, under conditions determined by the department, debt refinancing.

20           (2) The department may:

21           (a) Offer the loan or loan guarantee program described in  
22 subsection (1) of this section through a contract with a qualified  
23 entity; and

24           (b) Adopt rules governing the program, including the terms and  
25 conditions of borrower participation in the program and borrower  
26 eligibility criteria.

27           (3) The department of commerce may not use any Washington state  
28 funds or funds that come from the public treasury of the state of  
29 Washington to make loans or to make any payment under a loan or loan  
30 guarantee agreement.

31           (4) The department, in collaboration with the Washington economic  
32 development finance authority, small business development center, and  
33 department of financial institutions, must submit a report on the  
34 activities and outcomes of the small business loan or loan guarantee  
35 program to the governor and appropriate legislative committees by  
36 December 1, 2011, and annually thereafter.

37           (5) For purposes of this section:

1 (a) "Small business" means a business in its first year of  
2 operations or with fifty or fewer employees.

3 (b) "Small business loan" means a loan made for use exclusively in  
4 Washington to retain or expand a qualified small business.

5 (c) "Qualified small business" is a small business that has  
6 demonstrated a reasonable prospect of loan repayment of a small  
7 business loan.

8 **Business and Occupation Tax Credit for**  
9 **Qualified Employment Positions**

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW  
11 to read as follows:

12 (1) A credit is allowed against the tax due under this chapter for  
13 new qualified employment positions created as provided in this section.

14 (2) The credit equals:

15 (a) Four thousand dollars for each qualified employment position  
16 with wages and benefits greater than forty thousand dollars annually,  
17 and for which the business offers a health care plan, that is directly  
18 created in an eligible business; or

19 (b) Two thousand dollars for each qualified employment position  
20 with wages and benefits no less than one hundred fifty percent of the  
21 minimum wage and no more than forty thousand dollars annually, and for  
22 which the business offers a health care plan.

23 (3) For purposes of calculating the amount of credit under  
24 subsection (2) of this section with respect to qualified employment  
25 positions, the following applies:

26 (a) In determining the number of qualified employment positions, a  
27 fractional amount is rounded down to the nearest whole number; and

28 (b) Wages and benefits for each qualified employment position are  
29 equal to the quotient derived by dividing:

30 (i) The sum of the wages and benefits earned for the four  
31 consecutive full calendar quarters for which a credit under this  
32 section is earned by all of the person's new seasonal employees hired  
33 during that period; by

34 (ii) The number of qualified employment positions plus any  
35 fractional amount subject to rounding as provided under (a) of this  
36 subsection.

1 (4) For purposes of this section, a credit is earned for the four  
2 consecutive full calendar quarters after the calendar quarter during  
3 which the first qualified employment position is filled.

4 (5) The department must keep a running total of all credits allowed  
5 under this section during each fiscal year. The department may not  
6 allow any credits which would cause the total to exceed five million  
7 dollars in any fiscal year. If all or part of an application for  
8 credit is disallowed under this subsection, the disallowed portion must  
9 be carried over to the next fiscal year. However, the carryover into  
10 the next fiscal year is only permitted to the extent that the cap for  
11 the next fiscal year is not exceeded.

12 (6) No recipient may use the tax credits to decertify a union or to  
13 displace existing jobs in any community in the state.

14 (7) The credit may be used against any tax due under this chapter,  
15 and may be carried over until used. No refunds may be granted for  
16 credits under this section.

17 (8) Application for tax credits under this section must be made  
18 within ninety consecutive days after the first qualified employment  
19 position is filled. The application must be made to the department in  
20 a form and manner prescribed by the department. The application must  
21 contain information regarding the location of the business, the  
22 applicant's average employment, if any, at the facility for the four  
23 consecutive full calendar quarters immediately preceding the earlier of  
24 the calendar quarter during which the application required by this  
25 section is submitted to the department or the first qualified  
26 employment position is filled, estimated or actual new employment  
27 related to the business, estimated or actual wages of employees related  
28 to the business, estimated or actual costs, time schedules for  
29 completion and operation, and other information required by the  
30 department. The department must prescribe a method for calculating a  
31 seasonal employer's average employment levels. The department must  
32 rule on the application within sixty days.

33 (9)(a) Each recipient must submit a report to the department by the  
34 last day of the month immediately following the end of the four  
35 consecutive full calendar quarters for which a credit under this  
36 section is earned. The report must contain information, as required by  
37 the department, from which the department may determine whether the  
38 recipient is meeting the requirements of this section. If the

1 recipient fails to submit a report or submits an inadequate report, the  
2 department may declare the amount of taxes for which a credit has been  
3 used to be immediately assessed and payable. The recipient must keep  
4 records, such as payroll records showing the date of hire and  
5 employment security reports, to verify eligibility under this  
6 subsection (9).

7 (b) If, on the basis of a report under this section or other  
8 information, the department finds that a business is not eligible for  
9 tax credit under this section for reasons other than failure to create  
10 the required number of qualified employment positions, the amount of  
11 taxes for which a credit has been used is immediately due.

12 (c) If, on the basis of a report under this subsection (9) or other  
13 information, the department finds that a business has failed to create  
14 the specified number of qualified employment positions, the department  
15 must assess interest, but not penalties, on the credited taxes for  
16 which a credit has been used. The interest must be assessed at the  
17 rate provided for delinquent excise taxes, must be assessed  
18 retroactively to the date of the tax credit, and must accrue until the  
19 taxes for which a credit has been used are repaid.

20 (10) The employment security department must provide such  
21 information needed for the department to certify all determinations of  
22 employment and wages under this section.

23 (11) Applications, reports, and any other information received by  
24 the department under this section are subject to disclosure to the  
25 extent disclosure is not otherwise prohibited by state or federal law.

26 (12) A person claiming credit under chapter 82.62 RCW or RCW  
27 82.04.44525 or 82.04.448 cannot claim a credit under this section.

28 (13) The following definitions apply throughout this section,  
29 unless the context clearly requires otherwise.

30 (a) "Applicant" means a person applying for a tax credit under this  
31 section.

32 (b) "Eligible business" means a business in its first year of  
33 operations or with fifty or fewer employees.

34 (c) "First qualified employment position" means the first qualified  
35 employment position filled for which a credit under this section is  
36 sought.

37 (d) "Health care plan" means any "employee welfare benefit plan" as  
38 defined by the employee retirement income security act of 1974, Title

1 29 U.S.C. Sec. 1001 et seq., and any "health plan" or "health benefit  
2 plan" as defined in RCW 48.43.005, for the purpose of providing for its  
3 employees or their beneficiaries, through the purchase of insurance or  
4 otherwise, health care services. For the purposes of this section,  
5 "health care services" means services offered or provided by health  
6 care facilities and health care providers relating to the prevention,  
7 cure, or treatment of illness, injury, or disease.

8 (e)(i)(A) "Qualified employment position" means a permanent full-  
9 time employee employed in the eligible business in Washington during  
10 four consecutive full calendar quarters.

11 (B) For seasonal employers, "qualified employment position" also  
12 includes the equivalent of a full-time employee in work hours for four  
13 consecutive full calendar quarters.

14 (ii) For purposes of this subsection (13)(d), "full time" means a  
15 normal work week of at least thirty-five hours.

16 (iii) Once a permanent, full-time employee has been employed, a  
17 position does not cease to be a qualified employment position solely  
18 due to periods in which the position goes vacant, as long as:

19 (A) The cumulative period of any vacancies in that position is not  
20 more than one hundred twenty days in the four quarter period; and

21 (B) During a vacancy, the employer is training or actively  
22 recruiting a replacement permanent, full-time employee for the  
23 position.

24 (f) "Recipient" means a person receiving tax credits under this  
25 section.

26 (g) "Seasonal basis" means a continuous employment period of less  
27 than twelve consecutive months, for the purposes of "seasonal employee"  
28 and "seasonal employer" under this section.

29 (h) "Seasonal employee" means an employee of a seasonal employer  
30 who works on a seasonal basis.

31 (i) "Seasonal employer" means a person who regularly hires more  
32 than fifty percent of its employees to work on a seasonal basis.

33 (14) No applications may be accepted after June 30, 2012.

34 **Washington Small Business Taxpayer Bill of Rights**

35 NEW SECTION. **Sec. 4.** This chapter is known and cited as the  
36 "Washington small business taxpayer bill of rights."

1        NEW SECTION.    **Sec. 5.** (1) The legislature finds that taxes are one  
2 of the most sensitive points of contact between citizens and their  
3 government, and that there is a delicate balance between revenue  
4 collection and taxpayers' rights and responsibilities.

5        (2) The legislature further finds that the Washington tax system is  
6 based largely on voluntary compliance. The legislature also finds that  
7 compliance is best achieved when: (a) The department provides accurate  
8 tax information, instructions, and procedures to assist taxpayers to  
9 voluntarily comply with applicable state excise tax laws; and (b)  
10 taxpayers are not penalized for inadvertent mistakes.

11        (3) The legislature further finds that our excise tax system is  
12 complicated and as a consequence, small businesses, often lacking  
13 sophisticated tax advice, are especially at risk of making  
14 unintentional mistakes with respect to their state tax obligations.

15        (4) The legislature intends to provide a small business taxpayer  
16 bill of rights that: (a) Provides relief from unintentional mistakes  
17 regarding state tax obligations; (b) requires the department to provide  
18 information about a business's industry specific tax obligations at the  
19 time of tax registration; and (c) requires the department to adhere to  
20 any specific official written advice unless the department later  
21 modifies the advice in writing.

22        NEW SECTION.    **Sec. 6.** The department must administer this chapter.  
23 The department must adopt rules as may be necessary to fully implement  
24 this chapter and the rights established under this chapter.

25        NEW SECTION.    **Sec. 7.** Small business taxpayers of the state of  
26 Washington have:

27        (1) The right to receive industry specific tax guidance by the  
28 department at the time the taxpayer initially registers his or her  
29 business with the state;

30        (2) The right to a written explanation of the basis for any tax  
31 deficiency assessments, interest, and penalties at the time the  
32 assessments are issued;

33        (3) The right to have any interest and penalties on an assessment  
34 waived if the assessment was a result of an unintentional act of the  
35 taxpayer; and

1 (4) The right to rely on specific official written advice and  
2 written tax reporting instructions from the department to that  
3 taxpayer, and to have interest, penalties, and tax deficiency  
4 assessments waived when the taxpayer has so relied to their proven  
5 detriment unless the department provided later written tax reporting  
6 instructions modifying the initial instructions.

7 NEW SECTION. **Sec. 8.** Unless the context clearly requires  
8 otherwise, the definition in this section applies throughout this  
9 chapter.

10 "Small business taxpayer" means a taxpayer in its first year of  
11 business operations or with fifty or fewer employees.

12 **Sec. 9.** RCW 82.32.105 and 1998 c 304 s 13 are each amended to read  
13 as follows:

14 (1) If the department (~~(of revenue)~~) finds that the payment by a  
15 taxpayer of a tax less than that properly due or the failure of a  
16 taxpayer to pay any tax by the due date was the result of circumstances  
17 beyond the control of the taxpayer, the department (~~(of revenue shall)~~)  
18 must waive or cancel any penalties imposed under this chapter with  
19 respect to such tax.

20 (2) The department (~~(shall)~~) must waive or cancel the penalty  
21 imposed under RCW 82.32.090(1) when the circumstances under which the  
22 delinquency occurred do not qualify for waiver or cancellation under  
23 subsection (1) of this section if:

24 (a) The taxpayer requests the waiver for a tax return required to  
25 be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060,  
26 82.29A.050, or 84.33.086; and

27 (b) The taxpayer has timely filed and remitted payment on all tax  
28 returns due for that tax program for a period of twenty-four months  
29 immediately preceding the period covered by the return for which the  
30 waiver is being requested.

31 (3) The department (~~(shall)~~) must waive or cancel interest imposed  
32 under this chapter if:

33 (a) The failure to timely pay the tax was the direct result of  
34 written instructions given the taxpayer by the department; or

35 (b) The extension of a due date for payment of an assessment of



1 deficiency was not at the request of the taxpayer and was for the sole  
2 convenience of the department.

3 (4) The department must waive or cancel interest and penalties  
4 imposed under this chapter for a small business taxpayer if the failure  
5 to pay taxes due was not intentional. For the purposes of this  
6 subsection, "small business taxpayer" has the same meaning as provided  
7 in section 8 of this act.

8 (5) The department (~~(of revenue shall)~~) must adopt rules for the  
9 waiver or cancellation of penalties and interest imposed by this  
10 chapter.

### 11 **Online Business Portals**

12 **Sec. 10.** RCW 43.330.060 and 2010 c 165 s 2 are each amended to  
13 read as follows:

14 (1) The department (~~(shall)~~) must (a) assist in expanding the  
15 state's role as an international center of trade, culture, and finance;  
16 (b) promote and market the state's products and services both  
17 nationally and internationally; (c) work in close cooperation with  
18 other private and public international trade efforts; (d) act as a  
19 centralized location for the assimilation and distribution of trade  
20 information; and (e) establish and operate foreign offices promoting  
21 overseas trade and commerce.

22 (2) The department (~~(shall)~~) must identify and work with Washington  
23 businesses that can use local, state, and federal assistance to  
24 increase domestic and foreign exports of goods and services.

25 (3)(a) The department (~~(shall)~~) must work generally with small  
26 businesses and other employers to facilitate resolution of siting,  
27 regulatory, expansion, and retention problems. This assistance  
28 (~~(shall)~~) includes but is not (~~(be)~~) limited to assisting in workforce  
29 training and infrastructure needs, identifying and locating suitable  
30 business sites, and resolving problems with government licensing and  
31 regulatory requirements.

32 (b) The department must establish and continuously update an online  
33 portal to provide small businesses with information about a broad array  
34 of state, federal, and local services, including but not limited to:  
35 A directory of state, federal, and local agencies; training and

1 business counseling services; financing programs; and licensing,  
2 permitting, taxes, and other regulatory information.

3 (c) The department (~~shall~~) must identify gaps in needed services  
4 and develop steps to address them including private sector support and  
5 purchase of these services.

6 (4) The department (~~shall~~) must work to increase the availability  
7 of capital to small businesses by developing new and flexible  
8 investment tools; by assisting in targeting and improving the  
9 efficiency of existing investment mechanisms; and by assisting in the  
10 procurement of managerial and technical assistance necessary to attract  
11 potential investors.

12 (5) The department (~~shall~~) must assist women and minority-owned  
13 businesses in overcoming barriers to entrepreneurial success. The  
14 department shall contract with public and private agencies,  
15 institutions, and organizations to conduct entrepreneurial training  
16 courses for minority and women-owned businesses. The instruction  
17 (~~shall~~) must be intensive, practical training courses in financing,  
18 marketing, managing, accounting, and recordkeeping for a small  
19 business, with an emphasis on federal, state, local, or private  
20 programs available to assist small businesses. Instruction shall be  
21 offered in major population centers throughout the state at times and  
22 locations that are convenient for minority and women small business  
23 owners.

24 (6)(a) Subject to the availability of amounts appropriated for this  
25 specific purpose, by December 1, 2010, the department, in conjunction  
26 with the small business development center, must prepare and present to  
27 the governor and appropriate legislative committees a specific,  
28 actionable plan to increase access to capital and technical assistance  
29 to small businesses and entrepreneurs beginning with the 2011-2013  
30 biennium. In developing the plan, the department and the center may  
31 consult with the Washington state microenterprise association, and with  
32 other government, nonprofit, and private organizations as necessary.  
33 The plan must identify:

34 (i) Existing sources of capital and technical assistance for small  
35 businesses and entrepreneurs;

36 (ii) Critical gaps and barriers to availability of capital and  
37 delivery of technical assistance to small businesses and entrepreneurs;

1 (iii) Workable solutions to filling the gaps and removing barriers  
2 identified in (a)(ii) of this subsection; and

3 (iv) The financial resources and statutory changes necessary to put  
4 the plan into effect beginning with the 2011-2013 biennium.

5 (b) With respect to increasing access to capital, the plan must  
6 identify specific, feasible sources of capital and practical mechanisms  
7 for expanding access to it.

8 (c) The department and the center must include, within the analysis  
9 and recommendations in (a) of this subsection, any specific gaps,  
10 barriers, and solutions related to rural and low-income communities and  
11 small manufacturers interested in exporting.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.02 RCW  
13 to read as follows:

14 (1) Beginning October 1, 2011, master and renewal applications  
15 issued through the business license center must include a statement  
16 referencing the online business portal described in RCW  
17 43.330.060(3)(b).

18 (2) The statement required under subsection (1) of this section  
19 must be placed in a prominent location on at least one page of the  
20 paper and electronic master and renewal applications.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.32 RCW  
22 to read as follows:

23 (1) Beginning October 1, 2011, excise tax returns must include a  
24 statement referencing the online business portal described in RCW  
25 43.330.060(3)(b).

26 (2) The statement required under subsection (1) of this section  
27 must be placed in a prominent location on at least one page of the  
28 paper and electronic tax return.

### 29 **Office of Regulatory Assistance Provisions**

30 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
31 each repealed:

32 (1) RCW 43.131.401 (Office of regulatory assistance--Termination)  
33 and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13;  
34 and

1 (2) RCW 43.131.402 (Office of regulatory assistance--Repeal) and  
2 2010 c 162 s 7.

3 **Miscellaneous Provisions**

4 NEW SECTION. **Sec. 14.** Sections 4 through 8 of this act constitute  
5 a new chapter in Title 82 RCW.

6 NEW SECTION. **Sec. 15.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

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