SENATE BILL REPORT
SB 5208

As of April 19, 2017

Title: An act relating to creating the Washington rural jobs act.

Brief Description: Creating the Washington rural jobs act.

Sponsors: Senators Warnick, Takko, Dansel, Brown, Hawkins, Schoesler, Mullet and Saldaña.

Brief History:
Committee Activity: Agriculture, Water, Trade & Economic Development: 2/02/17, 2/16/17 [DPS-WM, DNP].
Ways & Means: 4/19/17.

Brief Summary of Bill

- Provides a process to establish a rural growth fund in order to invest in rural business concerns.
- Authorizes a tax credit for individuals or entities who invest in rural growth funds.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5208 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Wellman, Assistant Ranking Minority Member; Brown, Honeyford, Pearson, Short, Takko and Van De Wege.

Minority Report: Do not pass.
Signed by Senators Chase, Ranking Minority Member; McCoy.

Staff: Greg Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Greg Vogel (786-7413) and Jeff Olsen (786-7428)

Background: RBICs and SBICs. Rural Business Investment Companies (RBIC) and Small Business Investment Companies (SBIC) are privately owned and managed investment funds, licensed and regulated by the US Department of Agriculture (USDA) and Small Business Administration (SBA) respectively, that make capital investments in small businesses and smaller enterprises located in rural areas. Both RBICs and SBICs raise private capital from investors and may receive leverage from the the USDA or SBA respectively in order to fund the investments.

An RBIC or SBIC program is a provision in a state or federal tax code that offers incentives for private capital to invest in small businesses, startups, low-income areas, or regions otherwise under economic distress. These programs often include special criteria for a certain quantity of the credit to focus on rural or underdeveloped areas.

Summary of Bill (Proposed Second Substitute): Tax Credit Application, Approval, and Allocation. Beginning November 1, 2017, the Department of Commerce (Department) must accept applications for approval as a rural growth fund. The application must include all of the following:

- the total investment authority sought;
- a copy of the applicant's or an affiliate of the applicant's license as an RBIC or SBIC;
- evidence that the applicant or affiliates of the applicant have invested at least $100 million in nonpublic companies located in nonmetropolitan counties;
- an estimate of the number of jobs that will be created or retained in the state as a result of the applicant's rural growth investments and the assumptions used to determine the estimate;
- a business plan that includes a revenue impact assessment that demonstrates that their business plan will result in a positive economic impact on the state over a ten-year period that exceeds the cumulative amount of tax credits that would be issued to their investors;
- a signed affidavit from each investor stating the amount of credit-eligible capital contributions each taxpayer commits to make; and
- a nonrefundable application fee of $5,000 dollars.

The Department must make an application determination within 30 days of receipt on a first come, first-served basis. The Department may not approve more than $100 million in investment authority and not more than $60 million in credit-eligible capital contributions for the entire program.

The Department must deny an application if any of the following are true:

- the application is incomplete or the application fee is not paid in full;
- the application does not include a copy of the applicant's or an affiliate of the applicant's license as an RBIC or SBIC;
- the revenue impact assessment submitted does not demonstrate that the applicant's business plan will result in a positive economic impact on the state over a ten-year period that exceeds the cumulative amount of tax credits that would be issued to the applicant's investors;
- the credit-eligible capital contributions do not equal at least 60 percent of the total amount of investment authority sought; or

- the Department has already approved the maximum amount of investment authority and credit-eligible capital contributions allowed under the program.

Upon approval of an application, the Department must provide a written approval to the applicant as a rural growth fund specifying the amount of the applicant's investment authority. Upon receiving documentation from the rural growth fund that it is fully funded, the Department must issue a tax credit certificate to each investor whose affidavit was included in the application specifying the amount of the investor's credit-eligible capital contribution.

After receiving written approval, a rural growth fund must:

- within 60 days:
    a. collect the credit-eligible capital contributions from each taxpayer issued a tax credit certificate; and
    b. collect one or more investments of cash that, when added to the credit-eligible capital contributions, equal the rural growth fund's investment authority.
- within 65 days, send to the Department documentation sufficient to prove that the credit-eligible contributions and investments of cash have been collected.

Application fees are deposited in the newly created rural job creation fund and may be used by the Department to administer the program.

Tax Credit Established. A nonrefundable tax credit is allowed for taxpayers that make a credit-eligible capital contribution to a rural growth fund and are issued a tax credit certificate. The credit may be claimed against:

- business and occupation taxes; and
- insurance premium taxes.

The credit may not be transferred or allocated to any other entity other than an affiliate subject to business and occupation taxes or insurance premium taxes.

On the closing date, the taxpayer earns a credit equal to the amount of the taxpayer's credit-eligible capital contribution to the rural growth fund as specified on the tax credit certificate. The taxpayer may claim up to one-third of the credit for each of the calendar years that includes the fourth through sixth anniversaries of the closing date, exclusive of the amounts carried forward. The closing date is the date on which a rural growth fund has collected all credit-eligible capital contributions and investments of cash that make up the fund's investment authority.

If the amount of the credit for a calendar year exceeds the tax otherwise due for that year, the excess must be carried forward to ensuing calendar years until fully used. In order to claim a credit, the taxpayer must submit a copy of the tax credit certificate with the taxpayer's return for each calendar year the credit is claimed.

Revocation of Tax Credit Certificates and Exit. The Department must revoke a tax credit certificate if any of the following occur with respect to a rural growth fund before it exits the program:

- the rural growth does not invest 100 percent of its investment authority in rural growth investments in this state within two years of the closing date;
- the rural growth fund fails to maintain rural growth investments equal to 100 percent of its investment authority until the sixth anniversary of the closing date;
- the rural growth fund, before exiting the program, makes a distribution or payment that results in the rural growth fund having less than 100 percent of its investment authority invested in rural growth investments in this state or available for investment in rural growth investments and held in cash and other marketable securities;
- the rural growth fund invests more than the greater of $5 million or 20 percent of its investment authority in the same rural business concern; or
- the rural growth fund makes a rural growth investment in a rural business concern that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the rural growth fund, an affiliate of the rural growth fund, or an investor in the rural growth fund.

Before revoking one or more tax credit certificates, notice and opportunity to correct must be provided. If tax credit certificates are revoked, the associated investment authority and credit-eligible capital contributions do not count toward the limit on total investment authority and credit-eligible contributions and those are redistributed.

On or after the sixth anniversary of the closing date, a rural growth fund may apply to the Department to exit the program. The fact that no tax credit certificates have been revoked and that the rural growth fund has not received a notice of revocation that has not been cured is sufficient evidence to prove that the rural growth fund is eligible for exit. The Department may not revoke a tax credit certificate after the rural growth fund's exit from the program.

The state must share in all distributions and payments to equity holders in the rural growth fund in excess of the sum of the amount of equity capital invested in the fund by the equity holder and an amount equal to any projected increase in the equity holder's federal or state tax liability, related to the equity holder's ownership, management, or operation of the fund in the following amounts:

- if the number of jobs created or retained as a result of the rural growth fund's rural growth investments is less than 60 percent of the amount filed as part of the rural growth fund's application, 60 percent; and
- if the number of jobs created or retained as a result of the rural growth fund's rural growth investments is less than 80 percent but more than 60 percent of the amount filed as part of the rural growth fund's application, 30 percent.

<u>Request for Determination.</u> A rural growth fund, before making a rural growth investment, may request from the Department a written opinion as to whether the business in which it proposed to invest is a rural business concern. If the Department fails to provide the opinion by the fifteenth business day from the receipt of the request, the business in which the rural growth fund proposes to invest must be considered a rural business concern.

<u>Reporting Obligations.</u> Each rural growth fund must submit a report to the Department on or before the fifth business day after the second anniversary of the closing date and thereafter within 45 days of the end of the calendar year including any year that the rural growth fund

has not exited the program. The report must provide documentation as to the rural growth fund's rural growth investments and include:

- a bank statement evidencing each rural growth investment;
- the name, location of principal business operations, and industry NAICS code of each business receiving a rural growth investment;
- the number of employment positions created or retained as a result of the rural growth fund's rural growth investments as of the last day of the preceding calendar year and the assumptions used to determine the number of employment positions;
- the average annual salary of the employment positions; and
- any other information required by the Department.

Tax Preference Performance Statement. A tax preference performance statement states that the public policy objective is to create and retain jobs in rural areas of Washington and a vested tax credit is provided to induce taxpayers to invest in rural growth funds.

JLARC review. The program expires July 1, 2024, unless the Joint Legislative Audit and Review Committee (JLARC) finds that the aggregate number of jobs created or retained, as a result of the tax preference established in the bill, matches or exceeds the aggregate number of jobs set forth in the business plans of approved rural growth funds in the six years following enactment of the tax preference.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT COMMITTEE (First Substitute): Changes regarding information sharing between agencies:

- Requires the Department to provide the Office of the Insurance Commissioner (OIC) and the Department of Revenue (DOR) with information regarding rural growth fund application and exit.
- Clarifies what happens when a tax credit certificate is revoked.
- Clarifies DOR and OIC's roles in the tax credit application, approval, and allocation.
- Adds language addressing information sharing between the Department, DOR, and OIC for purposes of substantiating claimed credits, credits revoked, or credits transferred or sold to affiliates.

Changes regarding the tax credit:

- Clarifies the duration of time a tax credit may be carried forward and the impact of the act's expiration date on unused credits.
- Divides the tax credit section into separate sections for the business and occupation tax credit and the insurance premium and retaliatory tax credits.
- Details the verification process for tax credits issued and adds required information for the tax credit certificate.
- Outlines the process for the Department to reissue tax credit certificates when tax credits are transferred to an affiliate.

Changes regarding JLARC's review:

- Clarifies that JLARC must evaluate the number of new/retained jobs pro rata based upon the amount of investment authority awarded to each rural growth fund.
- Adds detail and consistency to the annual reporting requirements.
- Identifies the role of JLARC in identifying other data and information that may be necessary for the annual reports.

Other:

- Makes administrative and technical changes.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Agriculture, Water, Trade & Economic Development): *The committee recommended a different version of the bill than what was heard.* PRO: This bill comes from a recent paper written by a U.S. Senator and a doctor from Stanford. The paper discusses a key challenge for small business growth in rural areas, which is access to capital. There is unmet growth demand and need in these areas, and if this piece can be solved with smart and mentor capital, the jobs will follow. Twenty plus states use structures like these to drive capital and to meet economic development goals. Oregon has a similar program where in four years they have $106 million invested in rural areas, creating 1,309 jobs. The average salary of those jobs is $42,200. They estimate for every dollar of tax credit that has been foregone, $2.82 of new revenue has come from taxes, state and local. Utah has had similar success with a company that creates helicopter parts.

Persons Testifying (Agriculture, Water, Trade & Economic Development): PRO: Ryan Brennan, Advantage Capital Partners; Eric Lohnes, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Trade & Economic Development): No one.

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means): PRO: It is difficult for small rural businesses to raise capital. The tax credits provide an incentive to invest in small rural businesses. The tax credits along with investments by firms would generate $100 million in funding investments in rural areas. Investments must be made up front, with the tax credits occurring later. There are claw back provisions and penalties if objectives are not met.

Persons Testifying (Ways & Means): PRO: Mark Scheffel, Advantage Capital; Brad Boswell, Advantage Capital.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.