
SENATE BILL 5208

State of Washington

65th Legislature

2017 Regular Session

By Senators Warnick, Takko, Dansel, Brown, Hawkins, Schoesler, Mullet, and Saldaña

Read first time 01/17/17. Referred to Committee on Agriculture, Water, Trade & Economic Development.

1 AN ACT Relating to creating the Washington rural jobs act; adding
2 a new chapter to Title 82 RCW; and providing a contingent expiration
3 date.

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

5 NEW SECTION. **Sec. 1.** TAX PREFERENCE PERFORMANCE STATEMENT. (1)
6 This section is the tax preference performance statement for the tax
7 preference created in section 5 of this act. This performance
8 statement is only intended to be used for subsequent evaluation of
9 the tax preference.

10 (2) The legislature categorizes this tax preference as one
11 intended to create or retain jobs, as indicated in RCW
12 82.32.808(2)(c).

13 (3) It is the legislature's specific public policy objective to
14 create and retain jobs in rural areas of Washington. It is the
15 legislature's intent to provide a vested tax credit that may be used
16 to offset certain business and occupation taxes under chapter 82.04
17 RCW, insurance premium taxes under chapter 48.14 RCW, and any
18 retaliatory taxes under chapter 48.14 RCW owed by Washington
19 taxpayers, in order to induce such taxpayers to invest in rural
20 growth funds whose management teams:

1 (a) Have experience investing in companies located in rural
2 areas;

3 (b) Have been vetted by the United States small business
4 administration or the United States department of agriculture; and

5 (c) Have submitted a business plan that:

6 (i) Projects the number of jobs that will be created or retained
7 as a result of such investment fund's investments in rural companies;
8 and

9 (ii) Includes a revenue impact assessment that demonstrates that
10 the business plan will result in a positive economic impact on
11 Washington state over a ten-year period that exceeds the cumulative
12 amount of tax credits that would be issued to the investment fund's
13 investors, thereby:

14 (A) Enabling the capitalization of rural growth funds;

15 (B) Incentivizing and requiring rural growth funds to invest in
16 companies located in rural areas of Washington; and

17 (C) Enabling the creation or retention of jobs in rural areas of
18 Washington.

19 (4) If the joint legislative audit and review committee finds
20 that the aggregate number of jobs created or retained matches or
21 exceeds the aggregate number of jobs set forth in the business plans
22 of approved rural growth funds in the six years following enactment
23 of this tax preference, then the legislature intends to continue the
24 tax preference created in section 5 of this act.

25 (5) In order to obtain the data necessary to perform the review
26 in subsection (4) of this section, the joint legislative audit and
27 review committee may refer to the annual reports submitted by rural
28 growth funds to the department.

29 NEW SECTION. **Sec. 2.** SHORT TITLE. This chapter may be known and
30 cited as the Washington rural jobs act.

31 NEW SECTION. **Sec. 3.** DEFINITIONS. (1) "Affiliate" means an
32 entity that directly or indirectly, through one or more
33 intermediaries, controls, is controlled by, or is under common
34 control with another entity. For the purposes of this chapter, an
35 entity is "controlled by" another entity if the controlling person
36 holds, directly or indirectly, the majority voting or ownership
37 interest in the controlled person or has control over the day-to-day
38 operations of the controlled person by contract or by law.

1 (2) "Closing date" means the date on which a rural growth fund
2 has collected all of the amounts specified by section 4 of this act.

3 (3) "Credit-eligible capital contribution" means an investment of
4 cash by a person subject to (a) business and occupation taxes under
5 chapter 82.04 RCW, (b) insurance premium taxes under chapter 48.14
6 RCW, and/or (c) retaliatory taxes under chapter 48.14 RCW in a rural
7 growth fund that equals the amount specified on a tax credit
8 certificate issued by the department under section 4 of this act. The
9 investment must purchase an equity interest in the rural growth fund
10 or purchase, at par value or premium, a debt instrument that has a
11 maturity date at least five years from the closing date.

12 (4) "Department" means the department of commerce.

13 (5) "Investment authority" means the amount stated on the notice
14 issued under section 4(5) of this act certifying the rural growth
15 fund. At least sixty percent of a rural growth fund's investment
16 authority must be comprised of credit-eligible capital contributions.

17 (6) "Principal business operations" of a business are located at
18 the place or places where at least sixty percent of its employees
19 work or where employees that are paid at least sixty percent of its
20 payroll work. An out-of-state business that has agreed to relocate
21 employees using the proceeds of a rural growth investment to
22 establish its principal business operations in a rural area in the
23 state is deemed to have its principal business operations in this new
24 location provided it satisfies this definition within one hundred
25 eighty days after receiving the rural growth investment, unless the
26 department agrees to a later date.

27 (7) "Rural area" means either of the following:

28 (a) All areas outside of places identified by the United States
29 census bureau as having more than fifty thousand people; or

30 (b) Any area determined to be "rural in character" by the
31 undersecretary of agriculture for rural development within the United
32 States department of agriculture.

33 (8) "Rural business concern" means a business that, at the time
34 of the initial investment in the company by a rural growth fund:

35 (a) Has less than two hundred fifty employees and not more than
36 ten million dollars in net income for the preceding taxable year;

37 (b) Has its principal business operations in one or more rural
38 areas in the state; and

39 (c) Is engaged in industries related to manufacturing, plant
40 sciences, services, or technology or, if not engaged in such

1 industries, the department makes a determination that the investment
2 will be highly beneficial to the economic growth of the state.

3 (9) "Rural growth fund" means an entity certified by the
4 department under section 4 of this act.

5 (10) "Rural growth investment" means any capital or equity
6 investment in a rural business concern or any loan to a rural
7 business concern with a stated maturity at least one year after the
8 date of issuance.

9 NEW SECTION. **Sec. 4.** TAX CREDIT APPLICATION, APPROVAL, AND
10 ALLOCATIONS. (1) Beginning November 1, 2017, the department must
11 accept applications for approval as a rural growth fund. The
12 application must include all of the following:

13 (a) The total investment authority sought by the applicant under
14 the business plan;

15 (b) A copy of the applicant's or an affiliate of the applicant's
16 license as a rural business investment company under Title 7 U.S.C.
17 Sec. 2009cc, as amended, as of January 1, 2017, or as a small
18 business investment company under Title 15 U.S.C. Sec. 681, as
19 amended, as of January 1, 2017;

20 (c) Evidence that, as of the date the application is submitted,
21 the applicant or affiliates of the applicant have invested at least
22 one hundred million dollars in nonpublic companies located in
23 nonmetropolitan counties as defined by the office of management and
24 budget on the basis of counties or county-equivalent units;

25 (d) An estimate of the number of jobs that will be created or
26 retained in this state as a result of the applicant's rural growth
27 investments;

28 (e) A business plan that includes a revenue impact assessment
29 projecting state and local tax revenue to be generated by the
30 applicant's proposed rural growth investments prepared by a
31 nationally recognized third-party independent economic forecasting
32 firm using a dynamic economic forecasting model that analyzes the
33 applicant's business plan over the ten years following the date the
34 application is submitted to the department;

35 (f) A signed affidavit from each investor stating the amount of
36 credit-eligible capital contributions each taxpayer commits to make;
37 and

38 (g) A nonrefundable application fee of five thousand dollars.

1 (2) The department must make an application determination within
2 thirty days of receipt in the order in which the applications are
3 received. The department must deem applications received on the same
4 day to have been received simultaneously. The department may not
5 approve more than one hundred million dollars in investment authority
6 and not more than sixty million dollars in credit-eligible capital
7 contributions under this section. If requests for investment
8 authority exceed this limitation, the department must proportionally
9 reduce the investment authority and the credit-eligible capital
10 contributions for each approved application as necessary to avoid
11 exceeding the limit.

12 (3) The department must deny an application submitted under this
13 section if any of the following are true:

14 (a) The application is incomplete or the application fee is not
15 paid in full;

16 (b) The applicant does not satisfy all the criteria described in
17 subsection (1)(b) of this section;

18 (c) The revenue impact assessment submitted under subsection
19 (1)(e) of this section does not demonstrate that the applicant's
20 business plan will result in a positive economic impact on the state
21 over a ten-year period that exceeds the cumulative amount of tax
22 credits that would be issued to the applicant's investors under
23 section 5 of this act if the application were approved;

24 (d) The credit-eligible capital contributions described in
25 affidavits submitted under subsection (1)(f) of this section do not
26 equal at least sixty percent of the total amount of investment
27 authority sought under the applicant's business plan; or

28 (e) The department has already approved the maximum amount of
29 investment authority and credit-eligible capital contributions
30 allowed under subsection (2) of this section.

31 (4) If the department denies an application, the applicant may
32 provide additional information to the department to complete,
33 clarify, or cure defects in the application identified by the
34 department within fifteen days of the notice of denial for
35 reconsideration and determination. The department must review and
36 reconsider such applications within thirty days before any pending
37 application submitted after the original submission date of the
38 reconsidered application.

39 (5) The department may not deny a rural growth fund application
40 or reduce the requested investment authority for reasons other than

1 those described in subsections (2) and (3) of this section. Upon
2 approval of an application, the department must provide a written
3 approval to the applicant as a rural growth fund specifying the
4 amount of the applicant's investment authority and a tax credit
5 certificate to each investor whose affidavit was included in the
6 application specifying the amount of the investor's credit-eligible
7 capital contribution.

8 (6) After receiving the approval issued under subsection (5) of
9 this section, a rural growth fund must:

10 (a) Within sixty days:

11 (i) Collect the credit-eligible capital contributions from each
12 taxpayer issued a tax credit certificate under subsection (5) of this
13 section; and

14 (ii) Collect one or more investments of cash that, when added to
15 the contributions collected under (a)(i) of this subsection, equal
16 the rural growth fund's investment authority.

17 (b) Within sixty-five days, send to the department documentation
18 sufficient to prove that the amounts described in (a)(i) and (ii) of
19 this subsection have been collected.

20 (7) If the rural growth fund fails to fully comply with
21 subsection (6) of this section, the rural growth fund's approval
22 lapses and the corresponding investment authority and credit-eligible
23 capital contributions under this subsection do not count toward the
24 limits on the program size prescribed by subsection (2) of this
25 section. The department must first award lapsed investment authority
26 pro rata to each rural growth fund that was awarded less than the
27 requested investment authority under subsection (2) of this section,
28 which a rural growth fund may allocate to its investors in its
29 discretion. Any remaining investment authority may be awarded by the
30 department to new applicants.

31 (8) Application fees submitted to the department under subsection
32 (1)(g) of this section must be deposited in the rural job creation
33 fund, which is hereby created, and used by the department to
34 administer this chapter.

35 NEW SECTION. **Sec. 5.** TAX CREDIT ESTABLISHED. (1) A
36 nonrefundable tax credit is allowed for taxpayers that made a credit-
37 eligible capital contribution to a rural growth fund and were issued
38 a tax credit certificate under section 4 of this act. The credit may
39 be claimed against: (a) Business and occupation taxes imposed under

1 chapter 82.04 RCW, (b) insurance premium taxes imposed under chapter
2 48.14 RCW, and (c) retaliatory taxes imposed under chapter 48.14 RCW.
3 The credit may not be sold, transferred, or allocated to any other
4 entity other than an affiliate subject to the tax imposed by business
5 and occupation taxes under chapter 82.04 RCW or insurance premium
6 taxes under chapter 48.14 RCW.

7 (2) On the closing date, the taxpayer earns a credit equal to the
8 amount of the taxpayer's credit-eligible capital contribution to the
9 rural growth fund as specified on the tax credit certificate. The
10 taxpayer may claim up to one-third of the credit authorized under
11 this section for each of the taxable years that includes the third
12 through fifth anniversaries of the closing date, exclusive of amounts
13 carried forward under subsection (3) of this section.

14 (3) If the amount of the credit for a taxable year exceeds the
15 tax otherwise due for that year, the excess must be carried forward
16 to ensuing taxable years until fully used. A taxpayer claiming a
17 credit under this section must submit a copy of the tax credit
18 certificate with the taxpayer's return for each taxable year for
19 which the credit is claimed.

20 NEW SECTION. **Sec. 6.** REVOCATION OF TAX CREDIT CERTIFICATES AND

21 EXIT. (1) The department must revoke a tax credit certificate issued
22 under section 4 of this act if any of the following occur with
23 respect to a rural growth fund before it exits the program in
24 accordance with subsection (5) of this section:

25 (a) The rural growth fund in which the credit-eligible capital
26 contribution was made does not invest one hundred percent of its
27 investment authority in rural growth investments in this state within
28 two years of the closing date;

29 (b) The rural growth fund, after satisfying (a) of this
30 subsection, fails to maintain rural growth investments equal to one
31 hundred percent of its investment authority until the sixth
32 anniversary of the closing date. For the purposes of this subsection,
33 an investment is "maintained" even if the investment is sold or
34 repaid so long as the rural growth fund reinvests an amount equal to
35 the capital returned or recovered by the fund from the original
36 investment, exclusive of any profits realized, in other rural growth
37 investments in this state within twelve months of the receipt of such
38 capital. Amounts received periodically by a rural growth fund must be
39 treated as continually invested in rural growth investments if the

1 amounts are reinvested in one or more rural growth investments by the
2 end of the following calendar year. A rural growth fund is not
3 required to reinvest capital returned from rural growth investments
4 after the fifth anniversary of the closing date, and such rural
5 growth investments must be considered held continuously by the rural
6 growth fund through the sixth anniversary of the closing date;

7 (c) The rural growth fund, before exiting the program in
8 accordance with subsection (4) of this section, makes a distribution
9 or payment that results in the rural growth fund having less than one
10 hundred percent of its investment authority invested in rural growth
11 investments in this state or available for investment in rural growth
12 investments and held in cash and other marketable securities;

13 (d) The rural growth fund invests more than the greater of five
14 million dollars or twenty percent of its investment authority in the
15 same rural business concern, including amounts invested in affiliates
16 of the rural business concern; or

17 (e) The rural growth fund makes a rural growth investment in a
18 rural business concern that directly or indirectly through an
19 affiliate owns, has the right to acquire an ownership interest, makes
20 a loan to, or makes an investment in the rural growth fund, an
21 affiliate of the rural growth fund, or an investor in the rural
22 growth fund. This subsection does not apply to investments in
23 publicly traded securities by a rural business concern or an owner or
24 affiliate of such concern. For purposes of this subsection, a rural
25 growth fund will not be considered an affiliate of a rural business
26 concern solely as a result of its rural growth investment.

27 (2) Before revoking one or more tax credit certificates under
28 this subsection, the department must notify the rural growth fund of
29 the reasons for the pending revocation. The rural growth fund has
30 ninety days from the date the notice was dispatched to correct any
31 violation outlined in the notice to the satisfaction of the
32 department and avoid revocation of the tax credit certificate.

33 (3) If tax credit certificates are revoked under this section,
34 the associated investment authority and credit-eligible capital
35 contributions do not count toward the limit on total investment
36 authority and credit-eligible capital contributions described by
37 section 4(2) of this act. The department must first award reverted
38 authority pro rata to each rural growth fund that was awarded less
39 than the requested investment authority under section 4(5) of this

1 act. The department may award any remaining investment authority to
2 new applicants.

3 (4) On or after the sixth anniversary of the closing date, a
4 rural growth fund may apply to the department to exit the program and
5 no longer be subject to regulation hereunder. The department must
6 respond to the application within thirty days of receipt. In
7 evaluating the application, the fact that no tax credit certificates
8 have been revoked and that the rural growth fund has not received a
9 notice of revocation that has not been cured under subsection (2) of
10 this section is sufficient evidence to prove that the rural growth
11 fund is eligible for exit. The department may not unreasonably deny
12 an application submitted under this subsection. If the application is
13 denied, the notice must include the reasons for the determination.

14 (5) The department may not revoke a tax credit certificate after
15 the rural growth fund's exit from the program.

16 (6) The state must share in all distributions and payments to
17 equity holders in the rural growth fund in excess of the sum of the
18 amount of equity capital invested in the fund by such equity holder
19 and an amount equal to any projected increase in the equity holder's
20 federal or state tax liability, including penalties and interest,
21 related to the equity holder's ownership, management, or operation of
22 the fund in the following amounts:

23 (a) If the number of jobs created or retained as a result of the
24 rural growth fund's rural growth investments is less than sixty
25 percent of the amount filed as part of the rural growth fund's
26 application, sixty percent; and

27 (b) If the number of jobs created or retained as a result of the
28 rural growth fund's rural growth investments is less than eighty
29 percent but more than sixty percent of the amount filed as part of
30 the rural growth fund's application, thirty percent.

31 NEW SECTION. **Sec. 7.** REQUEST FOR DETERMINATION. A rural growth
32 fund, before making a rural growth investment, may request from the
33 department a written opinion as to whether the business in which it
34 proposed to invest is a rural business concern. The department, not
35 later than the fifteenth business day after the date of receipt of
36 the request, must notify the rural growth fund of its determination.
37 If the department fails to notify the rural growth fund by the
38 fifteenth business day of its determination, the business in which

1 the rural growth fund proposes to invest must be considered a rural
2 business concern.

3 NEW SECTION. **Sec. 8.** REPORTING OBLIGATIONS. (1) Each rural
4 growth fund must submit a report to the department on or before the
5 fifth business day after the second anniversary of the closing date.
6 The report must provide documentation as to the rural growth fund's
7 rural growth investments and include:

- 8 (a) A bank statement evidencing each rural growth investment;
- 9 (b) The name, location, and industry of each business receiving a
10 rural growth investment, including either the determination letter
11 set forth in section 7 of this act or evidence that the business
12 qualified as a rural business concern at the time the investment was
13 made;
- 14 (c) The number of employment positions created or retained as a
15 result of the rural growth fund's rural growth investments as of the
16 last day of the preceding calendar year; and
- 17 (d) Any other information required by the department.

18 (2) On or before the last day of February of each year following
19 the year in which the report required under subsection (1) of this
20 section is due, the rural growth fund must submit an annual report to
21 the department including the following:

- 22 (a) The number of employment positions created or retained as a
23 result of the rural growth fund's rural growth investments as of the
24 last day of the preceding calendar year;
- 25 (b) The average annual salary of the positions described in (a)
26 of this subsection; and
- 27 (c) Any other information required by the department.

28 NEW SECTION. **Sec. 9.** The department must adopt rules necessary
29 to implement this chapter.

30 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
31 constitute a new chapter in Title 82 RCW.

32 NEW SECTION. **Sec. 11.** (1) This act expires July 1, 2023, unless
33 the joint legislative audit and review committee finds under section
34 1 of this act that the aggregate number of jobs created or retained,
35 as a result of the new tax preference established in this act,
36 matches or exceeds the aggregate number of jobs set forth in the

1 business plans of approved rural growth funds in the six years
2 following enactment of the tax preference in section 4 of this act.

3 (2) The joint legislative audit and review committee must provide
4 notice of the expiration date of this section to affected parties,
5 the chief clerk of the house of representatives, the secretary of the
6 senate, the office of the code reviser, and others as deemed
7 appropriate by the department.

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