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**SENATE BILL 5084**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators McCoy, Kuderer, and Saldaña

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1 AN ACT Relating to the creation of the Washington community  
2 development authority; amending RCW 82.08.053; and adding a new  
3 chapter to Title 43 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that community  
6 organizations strongly rooted in poor communities of color and in  
7 poor rural communities have the cultural understanding, imagination,  
8 and vision to create capital assets and develop programs that will  
9 help reduce poverty and build stronger and more sustainable  
10 communities.

11 (2) The legislature finds that these organizations currently face  
12 structural barriers when seeking local, state, and federal capital  
13 funds. Those barriers have left many of these communities without the  
14 development capacity and capital assets other communities have been  
15 able to establish in recent years.

16 (3) The legislature further finds and acknowledges the need for a  
17 statewide authority to provide financing to foster development  
18 capacity and support capital projects within identified impacted  
19 communities.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires  
3 otherwise.

4        (1) "Community" means a group of people who reside or work within  
5 a geographic area and who currently or historically share a distinct  
6 cultural identity or local history.

7        (2) "Department" means the department of commerce.

8        (3) "Director" means the director of the department.

9        (4) "Eligible organizations" means local community-based  
10 nonprofit organizations and Washington community development  
11 authorities that serve impacted communities.

12        (5) "Impacted community" means a community of color or rural  
13 community that has been adversely impacted by poverty.

14        (6) "Washington community development authority" or "authority"  
15 means an authority created by organizations that serve impacted  
16 communities.

17        NEW SECTION.    **Sec. 3.**    (1) The Washington community development  
18 authority is hereby created as a statewide public corporation for the  
19 overall purpose of developing and coordinating public and private  
20 resources targeted to assist eligible organizations in impacted  
21 communities with the financing of capital projects and related  
22 economic development activities. The department shall serve as the  
23 fiduciary agent for the authority's funds when appropriated by the  
24 state.

25        (2) The affairs of the authority are managed by a board of  
26 directors, consisting of representatives of member organizations that  
27 provide services within impacted communities.

28        (3) Members of the authority and its board will be determined as  
29 defined in the authority's bylaws. The board shall submit three  
30 recommendations to the governor for appointment as chair of the  
31 board. The governor shall appoint a chair of the board at least six  
32 months prior to the conclusion of the term of each chair.

33        (4) The authority, in addition to the purpose stated in  
34 subsection (1) of this section, has the following purposes:

35        (a) To revitalize, enhance, and preserve the unique character of  
36 impacted communities;

37        (b) To allow poor communities of color and poor rural communities  
38 to build the capacity to meet the needs of their communities;

39        (c) To restore a local area's sense of community;

- 1 (d) To reduce the displacement of community members and  
2 businesses;
- 3 (e) To stimulate the community's economic vitality;
- 4 (f) To enhance vital public services;
- 5 (g) To improve the standard of living of residents and the  
6 business environment in impacted communities by constructing and  
7 managing the types of self-determined assets that are essential to  
8 reducing poverty, such as affordable housing, business development,  
9 and community facilities; and
- 10 (h) To reduce poverty.

11 NEW SECTION. **Sec. 4.** (1) The authority has the power to:

- 12 (a) Accept gifts, grants, loans, or other aid from public and  
13 private entities;
- 14 (b) Employ and appoint such agents, attorneys, officers, and  
15 employees as may be necessary to implement the purposes and duties of  
16 an authority;
- 17 (c) Contract and enter into partnerships with individuals,  
18 associations, corporations, and local, state, and federal  
19 governments;
- 20 (d) Buy, own, lease, and sell real and personal property;
- 21 (e) Hold in trust, improve, and develop land;
- 22 (f) Invest, deposit, and reinvest its funds;
- 23 (g) Issue negotiable bonds and notes in conformance with  
24 applicable provisions of the Uniform Commercial Code and state law in  
25 such principal amounts as, in the discretion of the authority, are  
26 appropriate to provide sufficient funds for achieving any authority  
27 purposes or to secure financial assistance, including matching funds  
28 from the United States, a state, and any political subdivision or  
29 agency of either, for authority projects and activities;
- 30 (h) Incur debt in furtherance of its mission;
- 31 (i) Enter into agreements with public or private entities,  
32 including partnership agreements and limited liability company  
33 agreements to implement within the boundaries of impacted communities  
34 the federal new markets tax credit program established by the  
35 community renewal tax relief act of 2000, 26 U.S.C. Sec. 45D, or its  
36 successor statute or other federal tax credit programs such as the  
37 low-income housing tax credit program;
- 38 (j) Lend or grant its funds for any lawful purposes. For purposes  
39 of this section, "lawful purposes" includes without limitation, any

1 use of funds, including loans thereof to public or private parties,  
2 authorized by agreements with the United States or any department or  
3 agency thereof under which federal or private funds are obtained, or  
4 authorized under federal laws and regulations pertinent to such  
5 agreements; and

6 (k) Exercise such additional powers as may be authorized by law.

7 (2) The authority has no power of eminent domain nor any power to  
8 levy taxes or special assessments.

9 (3) Except for federal funds, all public funds accepted under  
10 subsection (1)(a) of this section:

11 (a) Are subject in all respects to Article VIII, section 5 or 7,  
12 as appropriate, of the state Constitution, and RCW 42.17A.550; and

13 (b) May not be used to support or oppose a candidate, ballot  
14 proposition, political party, or political committee.

15 (4) The authority, using funds specifically appropriated for such  
16 purpose, through the department, shall finance in whole or in part  
17 the operations of the authority and its allocations to projects that  
18 assist eligible organizations with financing for technical  
19 assistance, capital projects, and community benefit projects in  
20 impacted communities.

21 NEW SECTION. **Sec. 5.** The authority has the duty to:

22 (1) Work with local organizations to create community growth  
23 plans;

24 (2) Identify and assist with the implementation of selected  
25 capital projects;

26 (3) Submit a list of projects recommended for funding to the  
27 legislature;

28 (4) Use gifts, grants, loans, and other aid from public or  
29 private entities to carry out selected projects;

30 (5) Maintain books and records as appropriate for the conduct of  
31 its affairs; and

32 (6) Demonstrate ongoing accountability for its actions by  
33 reporting to the governor and the legislature on the authority's  
34 activities and accomplishments.

35 NEW SECTION. **Sec. 6.** Organizations that may receive assistance  
36 from the department under this chapter are local community-based  
37 nonprofit organizations and community development authorities that  
38 serve impacted communities. Eligibility for assistance from the

1 department under this chapter also requires compliance with revenue  
2 and taxation laws, as applicable to the recipient, at the time the  
3 funding is made.

4 NEW SECTION. **Sec. 7.** The Washington community development  
5 authority account is created in the custody of the state treasurer.  
6 The account shall include revenue from the sources established by  
7 this chapter, appropriations by the legislature, private  
8 contributions, repayment of loans, and all other sources.  
9 Expenditures from the account may be used only for authority  
10 operations and projects under this chapter. Only the director or the  
11 director's designee may authorize expenditures from the account. The  
12 account is subject to allotment procedures under chapter 43.88 RCW,  
13 but an appropriation is not required for expenditures.

14 NEW SECTION. **Sec. 8.** The authority may receive gifts, grants,  
15 or endowments from public or private sources that are made from time  
16 to time, in trust or otherwise, for the use and benefit of the  
17 purposes of the authority and spend gifts, grants, or endowments or  
18 income from public or private sources according to their terms,  
19 unless the receipt of the gifts, grants, or endowments violate RCW  
20 42.17A.560.

21 **Sec. 9.** RCW 82.08.053 and 2017 3rd sp.s. c 28 s 202 are each  
22 amended to read as follows:

23 (1)(a)(i) Except as provided in (a)(ii) of this subsection,  
24 beginning January 1, 2018, and for any calendar year thereafter,  
25 remote sellers, referrers, and marketplace facilitators meeting the  
26 criteria in subsection (2) of this section or that have a physical  
27 presence in this state, must elect to either collect and remit retail  
28 sales or use tax on all taxable retail sales into this state pursuant  
29 to this chapter and chapters 82.12 and 82.32 RCW or comply with RCW  
30 82.13.020.

31 (ii) Until January 1, 2020, the requirement under (a)(i) of this  
32 subsection (1) to collect and remit tax or comply with RCW 82.13.020  
33 does not apply with respect to the retail sale of digital products  
34 and digital codes, other than (A) specified digital products and  
35 digital games and (B) digital codes used to redeem specified digital  
36 products and digital games, by a marketplace seller through a  
37 marketplace facilitator or directly resulting from a referral.

1 (b) For marketplace facilitators, the election provided in (a) of  
2 this subsection (1) applies only with respect to:

3 (i) Retail sales through the marketplace facilitator's  
4 marketplace by or on behalf of marketplace sellers who do not have a  
5 physical presence in this state; and

6 (ii) A marketplace facilitator's own retail sales, if the  
7 marketplace facilitator does not have a physical presence in this  
8 state.

9 (c)(i) For referrers, the election provided in (a) of this  
10 subsection (1) applies only with respect to:

11 (A) Retail sales directly resulting from a referral of the  
12 purchaser to a marketplace seller who does not have a physical  
13 presence in this state; and

14 (B) A referrer's own retail sales, if the referrer does not have  
15 a physical presence in this state.

16 (ii) A referrer may make different elections with respect to  
17 retail sales described in (c)(i)(A) and (B) of this subsection.

18 (d) An election under (a) of this subsection (1) to collect  
19 retail sales or use tax is binding on the remote seller, referrer, or  
20 marketplace facilitator until January 1st of the calendar year that  
21 is at least twelve consecutive months after the remote seller,  
22 referrer, or marketplace facilitator began collecting retail sales or  
23 use tax under such election. A remote seller, referrer, or  
24 marketplace facilitator who has made an election under this  
25 subsection to collect retail sales or use tax may change its election  
26 and comply with RCW 82.13.020 by providing written notice to the  
27 department in a form and manner required by the department. Such an  
28 election change may take effect only on the first day of the calendar  
29 year that is at least thirty days following the date that the  
30 department received written notice from the remote seller, referrer,  
31 or marketplace facilitator of its change in election.

32 (e)(i) Remote sellers, referrers, and marketplace facilitators  
33 complying with RCW 82.13.020 may change their election under this  
34 subsection (1) at any time by collecting and remitting retail sales  
35 or use taxes under this chapter or chapter 82.12 RCW on taxable  
36 retail sales sourced to this state. Such an election is binding as  
37 provided in (d) of this subsection (1).

38 (ii) Remote sellers, referrers, and marketplace facilitators  
39 electing for the first time to collect retail sales or use tax must  
40 begin collecting state and local retail sales or use taxes on taxable

1 retail sales sourced to this state beginning on the first day of the  
2 calendar month that is at least thirty days from the date that the  
3 remote seller, referrer, or marketplace facilitator met either  
4 threshold described in subsection (2) of this section.

5 (f) If the department discovers that any remote seller, referrer,  
6 or marketplace facilitator required to make an election under this  
7 subsection (1) is not registered with the department and collecting  
8 retail sales or use tax, the remote seller, referrer, or marketplace  
9 facilitator is conclusively presumed to have elected to comply with  
10 the notice and reporting requirements of RCW 82.13.020.

11 (2)(a) A remote seller is subject to subsection (1) of this  
12 section if, during the current or immediately preceding calendar  
13 year, its gross receipts from retail sales sourced to this state  
14 under RCW 82.32.730 are at least ten thousand dollars.

15 (b) A marketplace facilitator is subject to subsection (1) of  
16 this section if, during the current or immediately preceding calendar  
17 year, the gross receipts from retail sales sourced to this state  
18 under RCW 82.32.730 by the marketplace facilitator, whether in its  
19 own name or as an agent of a marketplace seller, total at least ten  
20 thousand dollars.

21 (c) A referrer is subject to subsection (1) of this section if,  
22 during the current or immediately preceding calendar year, the gross  
23 income of the business received from the referrer's referral services  
24 apportioned to Washington under RCW 82.04.462, whether or not subject  
25 to tax under chapter 82.04 RCW, and from retail sales sourced to this  
26 state under RCW 82.32.730, if any, is at least two hundred sixty-  
27 seven thousand dollars.

28 (3) This section is subject to the provisions of RCW 82.32.733.

29 (4) Thirty-one percent of the total revenues collected under this  
30 section must be deposited into the Washington community development  
31 authority account created by section 7 of this act. Such funds may be  
32 used only for the purposes enumerated in chapter 43.--- RCW (the new  
33 chapter created in section 10 of this act).

34 (5) For the purposes of this section, "marketplace facilitator,"  
35 "referral," "referrer," and "remote seller" have the same meaning as  
36 provided in RCW 82.13.010.

37 NEW SECTION. **Sec. 10.** If any provision of this act or its  
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 11.** Sections 1 through 8 of this act  
4 constitute a new chapter in Title 43 RCW.

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