

E2SHB 1015 - S COMM AMD
By Committee on Ways & Means

ADOPTED 03/04/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This chapter may be known and cited as
4 the Washington equitable access to credit act.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
6 RCW to read as follows:

7 (1) Subject to the limitations in this section, a credit is
8 allowed against the tax imposed under this chapter for contributions
9 made by a person to the equitable access to credit program created in
10 chapter 43.--- RCW (the new chapter created in section 6 of this
11 act).

12 (2)(a) The person must make the contribution before claiming a
13 credit authorized under this section. The credit may be used against
14 any tax due under this chapter. The amount of the credit claimed for
15 a reporting period may not exceed the tax otherwise due under this
16 chapter for that reporting period. No person may claim more than
17 \$1,000,000 of credit in any calendar year, including credit carried
18 over from a previous calendar year. No refunds may be granted for any
19 unused credits.

20 (b) Any amount of tax credit otherwise allowable under this
21 section not claimed by the person in any calendar year may be carried
22 forward and claimed against a person's tax liability for the next
23 succeeding calendar year; and any credit not used in that next
24 succeeding calendar year may be carried forward and claimed against
25 the person's tax liability for the second succeeding calendar year,
26 but may not be carried over for any calendar year thereafter.

27 (3) Credits are available on a first-in-time basis. The
28 department must disallow any credits, or portions thereof, that would
29 cause the total amount of credits claimed under this section for any
30 calendar year to exceed \$8,000,000. If this limitation is reached,
31 the department must notify the department of commerce that the annual

1 statewide limit has been met. In addition, the department must
2 provide written notice to any person who has claimed tax credits in
3 excess of the limitation in this subsection. The notice must indicate
4 the amount of tax due and provide the tax be paid within 30 days from
5 the date of the notice. The department may not assess penalties and
6 interest as provided in chapter 82.32 RCW on the amount due in the
7 initial notice if the amount due is paid by the due date specified in
8 the notice, or any extension thereof.

9 (4) To claim a credit under this section, a person must
10 electronically file with the department all returns, forms, and any
11 other information required by the department, in an electronic format
12 as provided or approved by the department. Any return, form, or
13 information required to be filed in an electronic format under this
14 section is not filed until received by the department in electronic
15 format. As used in this subsection, "returns" has the same meaning as
16 "return" in RCW 82.32.050.

17 (5) No application is necessary for the tax credit. The person
18 must keep records necessary for the department to verify eligibility
19 under this section.

20 (6) The equitable access to credit program must provide to the
21 department, upon request, such information as may be needed to verify
22 eligibility for credit under this section, including information
23 regarding contributions received by the program.

24 (7) The maximum credit that may be earned for each calendar year
25 under this section for a person is limited to the lesser of
26 \$1,000,000 or an amount equal to 100 percent of the contributions
27 made by the person to the equitable access to credit program.

28 (8) No credit may be earned for contributions made on or after
29 June 30, 2027. Credits may be claimed as provided in subsections (2)
30 through (4) of this section; however, credits may not be claimed
31 prior to January 1, 2023.

32 (9) For the purposes of this section, "equitable access to credit
33 program" means a program established within the department of
34 commerce pursuant to section 3 of this act.

35 (10) The provisions of chapter 82.32 RCW apply to the
36 administration of this section.

37 (11) This section expires July 1, 2027.

38 NEW SECTION. **Sec. 3.** (1) Subject to appropriation, the
39 department of commerce shall create and operate the equitable access

1 to credit program. The purpose of the equitable access to credit
2 program is to award grants to qualified lending institutions, using
3 funds generated by business and occupation tax credits created in
4 section 2 of this act, for the purpose of providing access to credit
5 for historically underserved communities. The equitable access to
6 credit program must be governed by the provisions of this chapter and
7 by any guidelines developed and rules adopted by the department of
8 commerce pursuant to this chapter.

9 (2) The following requirements apply to the operation of the
10 equitable access to credit program:

11 (a) No more than 25 percent of all grants awarded in any calendar
12 year may be awarded to the same grant recipient;

13 (b) Up to 20 percent of an individual grant award may be used by
14 the grant recipient to fund a loan loss reserve, technical
15 assistance, and/or small business training programs;

16 (c) At least 65 percent of the value of all grants awarded in any
17 calendar year must be provided for native community development
18 financial institution grantees or grantees to provide services or
19 invest, or both, in rural counties as defined in RCW 82.14.370; and

20 (d) Beginning in fiscal year 2022, up to five percent of the
21 program revenues may be used for all agencies' staffing and other
22 administrative costs related to the implementation of this act. In
23 the event that the statewide limit in section 2(3) of this act is not
24 reached, the percentage used for administration may be increased as
25 necessary to maintain normal staffing operations, not to exceed 10
26 percent.

27 (3) In order to receive a grant award under the equitable access
28 to credit program, a qualified lending institution must:

29 (a) Be recognized by the United States department of the treasury
30 as:

31 (i) An emerging community development financial institution; or

32 (ii) A certified community development financial institution;

33 (b) Match any grant awarded by the equitable access to credit
34 program on:

35 (i) At least a five percent basis, if the institution is
36 recognized by the United States department of the treasury as an
37 emerging community development financial institution;

38 (ii) At least a 10 percent basis, if the institution:

39 (A) Is recognized by the United States department of the treasury
40 as a certified community development financial institution; and

1 (B) Has net assets of fewer than \$3,000,000 at the time of the
2 grant application; or

3 (iii) At least a 25 percent basis, if the institution:

4 (A) Is recognized by the United States department of the treasury
5 as a certified emerging community development financial institution;
6 and

7 (B) Has net assets of \$3,000,000 or more at the time of the grant
8 application;

9 (c) Be registered as a nonprofit organization exempt from
10 taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal
11 revenue code of 1986, as amended, as of the effective date of this
12 section; and

13 (d) Demonstrate a history of lending in Washington.

14 (4) The director must appoint members to an advisory board that
15 will assist the department in ranking applications for the grants.
16 The department is encouraged to seek representation from members with
17 relevant expertise, including those from the banking industry
18 familiar with community development financial institutions, rural
19 economic development professionals, local government representatives,
20 and representatives from federally recognized Indian tribes. The
21 department shall seek, to the greatest extent possible, a fair
22 geographic balance.

23 (5)(a) The following criteria must be considered in ranking
24 applications:

25 (i) The number and total value of loans and investments closed
26 during the previous five-year period by the qualified lending
27 institution in Washington and the percentage of those loans and
28 investments that went to historically underserved communities;

29 (ii) Funds leveraged by the proposed grant award, which may be no
30 less than 25 percent for certified community development financial
31 institutions with net assets of \$3,000,000 or more at the time of the
32 grant application;

33 (iii) Projected loan or investment production with the award over
34 the performance period of the grant;

35 (iv) How the award supports the growth of the qualified lending
36 institution;

37 (v) Past performance of loans and investments made by the
38 qualified lending institution including, where applicable, past
39 performance of loans and investments made using funds from the
40 equitable access to credit program; and

1 (vi) Awards to a diversity of qualified lending institution
2 awardees, including institutions of different sizes or with different
3 target markets or products, access to historically underserved
4 communities, or other differentiators that ensure a broad-base access
5 to capital.

6 (b) The department may also include such additional criteria as
7 it deems helpful in achieving the goal of ensuring access to credit
8 to underserved communities across the state.

9 (6) Grants may be awarded from the equitable access to credit
10 program beginning six months after the first tax credits are claimed
11 pursuant to section 2 of this act. Grant awards must cease from the
12 equitable access to credit program upon the expiration of this
13 chapter.

14 (7) No loan or investment made by a qualified lending institution
15 using funds awarded from the equitable access to credit program may
16 have an interest rate that exceeds 200 basis points above the Wall
17 Street Journal prime rate when the loan or investment is made.

18 (8) Once a loan or investment made by a qualified lending
19 institution using funds awarded from the equitable access to credit
20 program has been repaid, the qualified lending institution must
21 reloan the repaid funds consistent with the terms of this chapter.

22 (9) A qualified lending institution that receives funds from the
23 equitable access to credit program must submit a report to the
24 department of commerce by June 30th of each year that contains the
25 following information:

26 (a) A list of loans and investments made using funds from the
27 equitable access to credit program's grant and associated match,
28 including, on a per-borrower or per-investee basis:

29 (i) The date the loan or investment was originated;

30 (ii) The amount of the loan or investment;

31 (iii) The total cost of the project, including owner equity and
32 leverage;

33 (iv) The interest rate and interest type;

34 (v) The Wall Street Journal prime rate at the time the loan or
35 investment is made;

36 (vi) The term;

37 (vii) The number of permanent full-time equivalent jobs projected
38 to be created in the business due to this financing;

39 (viii) Whether the loan or investment utilized a guarantee
40 program;

- 1 (ix) The North American industry classification system code;
- 2 (x) The entity structure;
- 3 (xi) Whether the investee or borrower is more than 50 percent
- 4 owned or controlled by:
- 5 (A) One or more minorities;
- 6 (B) One or more women; or
- 7 (C) One or more low-income persons;
- 8 (xii) The race of the primary investee(s) or borrower(s);
- 9 (xiii) Whether the primary investee or borrower is Hispanic or
- 10 Latino; and
- 11 (xiv) The location, by city and county, in which funds from the
- 12 program will be invested;
- 13 (b) Certification that each loan or investment made using funds
- 14 from the program was to a historically underserved community; and
- 15 (c) Other information as required by the department of commerce.
- 16 (10) No later than September 15th of each year, beginning in
- 17 2022, the department of commerce must submit a report to the
- 18 appropriate committees of the legislature that contains the following
- 19 information:
- 20 (a) The list of grant applicants, total value of grants
- 21 requested, and the location of each applicant;
- 22 (b) The list of grant recipients, total amount of awards, and
- 23 required match amounts; and
- 24 (c) On an aggregate basis, information on loans and investments
- 25 as reported under subsection (9) of this section.
- 26 (11) The department may contract for all or part of the
- 27 administration of this section.
- 28 (12) The department may adopt rules as necessary to implement
- 29 this section.

30 NEW SECTION. **Sec. 4.** The equitable access to credit program

31 account is created in the custody of the state treasurer. All

32 receipts from contributions to the equitable access to credit program

33 created by this chapter must be deposited in the account.

34 Expenditures from the account may be used only for the award of

35 grants to qualified lending institutions from the equitable access to

36 credit program and administrative costs pursuant to section 3 of this

37 act. Only the director of the department of commerce or the

38 director's designee may authorize expenditures from the account. The

39 account is subject to allotment procedures under chapter 43.88 RCW,

1 but an appropriation is not required for expenditures. Any funds
2 remaining in the account upon the expiration of this chapter must be
3 transferred to the state general fund.

4 NEW SECTION. **Sec. 5.** (1) This section is the tax preference
5 performance statement for the tax preference contained in section 2,
6 chapter . . ., Laws of 2022 (section 2 of this act). This performance
7 statement is only intended to be used for subsequent evaluation of
8 the tax preference. It is not intended to create a private right of
9 action by any party or to be used to determine eligibility for
10 preferential tax treatment.

11 (2) The legislature categorizes this tax preference as one
12 intended to create or retain jobs pursuant to RCW 82.32.808(2)(c), as
13 well as encourage community and economic development within
14 communities that have historically lacked access to capital.

15 (3) It is the legislature's specific public policy objective to
16 create a program that encourages investment in small, underserved
17 businesses to encourage community and economic development in
18 Washington.

19 (4) The legislature intends to extend the expiration date of this
20 tax preference if a review finds that the equitable access to credit
21 program has had a net positive impact on investment in communities
22 historically underserved by credit and on state and local tax
23 revenues. In conducting its review under this section, the joint
24 legislative audit and review committee should consider, among other
25 data:

26 (a) The number and aggregate amount of loans and investments
27 originated under the program, including with revolved dollars;

28 (b) Overall match, including project leverage, invested by grant
29 recipients;

30 (c) The balance sheet growth of community development financial
31 institutions that received grants from the program;

32 (d) Whether participants in the program achieved balance sheet
33 growth during the time of their participation in the program;

34 (e) The percentage of community development financial
35 institutions in Washington that received funding from the program;
36 and

37 (f) The level of ongoing demand for funding from the program.

1 (5) In order to obtain the data necessary to perform the review
2 in subsection (4) of this section, the joint legislative audit and
3 review committee may refer to any data collected by the state.

4 (6) This section expires July 1, 2027.

5 NEW SECTION. **Sec. 6.** Sections 1, 3, and 4 of this act
6 constitute a new chapter in Title 43 RCW."

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7 On page 1, line 2 of the title, after "act;" strike the remainder
8 of the title and insert "adding a new section to chapter 82.04 RCW;
9 adding a new chapter to Title 43 RCW; creating a new section; and
10 providing expiration dates."

EFFECT: (1) Changes implementation dates to assume implementation
in 2022 rather than 2021.

(2) Reduces the duration of the tax credit from 10 years to five
years.

(3) Limits the interest rates at which loans or investments can
be made in the program to 200 basis points over the Wall Street
Journal Prime Rate.

(4) Requires qualified lending institutions to ensure that funds
received through repaid loans that utilized funds from the program
continue to be subject to the requirements of the program.

(5) Reduces the match requirements for qualified lending
institutions.

(6) Removes the chapter expiration date.

(7) Specifies that B&O tax credits may not be claimed prior to
January 1, 2023.

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