

HOUSE BILL REPORT

E2SHB 1015

As Amended by the Senate

Title: An act relating to creating the Washington equitable access to credit act.

Brief Description: Creating the Washington equitable access to credit act.

Sponsors: House Committee on Finance (originally sponsored by Representatives Maycumber, Chapman, Tharinger, Graham, Santos and Macri).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/18/21, 1/21/21 [DPS];

Finance: 2/1/21, 2/18/21 [DP2S(w/o sub CPB)];

Appropriations: 2/22/21 [DP2S(FIN)].

Floor Activity:

Passed House: 3/9/21, 95-1.

Passed House: 1/21/22, 97-0.

Senate Amended.

Passed Senate: 3/4/22, 46-2.

Brief Summary of Engrossed Second Substitute Bill

- Establishes the Equitable Access to Credit Program (Program) within the Department of Commerce (Commerce).
- Authorizes Commerce to award grants to qualified lending institutions for lending or investing in historically underserved communities.
- Creates a credit against business and occupation taxes owed for contributions made to the Program.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 7 members: Representatives Kirby, Chair; Walen, Vice Chair; Vick, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Corry, Ryu and Santos.

Staff: Michelle Rusk (786-7153).

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Consumer Protection & Business. Signed by 15 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai, Vick and Wylie.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Staff: Tracey Taylor (786-7152).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill by Committee on Finance be substituted therefor and the second substitute bill do pass. Signed by 28 members: Representatives Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Rude, Ryu, Schmick, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 5 members: Representatives Ormsby, Chair; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Pollet and Steele.

Staff: Jessica Van Horne (786-7288).

Background:

Community Development Financial Institutions.

A Community Development Financial Institution (CDFI) is a specialized financial institution certified by the United States Department of the Treasury (Treasury) to provide loans for community development purposes. The CDFIs work in economically distressed markets that are underserved by traditional financial institutions and provide financial products such as mortgage financing for low-income homebuyers and not-for-profit developers, flexible underwriting and risk capital for community facilities, and technical assistance and commercial loans to small businesses in low-income areas. The Treasury

offers competitive financial and technical assistance awards to assist certified CDFIs in offering these financial products. An emerging CDFI may apply for a technical assistance award if it can demonstrate the ability to become a certified CDFI within three years. The CDFIs include institutions such as community development banks, credit unions, and venture capital funds. As of December 2020, 29 certified CDFIs were operating in Washington.

Business and Occupation Taxes.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss. A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent (businesses with taxable income of less than \$1 million) or 1.75 percent (businesses with taxable income of \$1 million or more) for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities. In addition, a taxpayer may be eligible to utilize other tax preferences, including credits and deductions, to reduce their tax liability. The B&O taxes are collected by the Department of Revenue (Revenue) and deposited into the State General Fund.

Tax Preference Performance Statement and Expiration Date.

All new tax preference legislation must include a tax preference performance statement, unless exempted. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objectives of the tax preference and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference. New tax preferences expire 10 years after the effective date of the tax preference, unless otherwise provided.

Summary of Engrossed Second Substitute Bill:

The Department of Commerce (Commerce) is directed to create and operate the Equitable Access to Credit Program (Program). The purpose of the Program is to award grants to qualified lending institutions (QLIs) to provide access to credit for historically underserved communities. The grants are funded by taxpayers who may receive a B&O tax credit for contributions to the Program.

Eligibility Requirements.

The QLIs may receive grant funding under the program. A QLI must be:

- recognized by the Treasury as an emerging or certified CDFI;
- registered as a nonprofit organization exempt from taxation under Title 26 U.S.C. §501 (c)(3) of the Internal Revenue Code; and
- able to demonstrate a history of lending in Washington.

In addition, a QLI must provide grant matching funds of: (1) at least 20 percent if recognized as an emerging CDFI; (2) at least 50 percent if recognized as a certified CDFI with assets of fewer than \$3 million; or (3) 100 percent if recognized as a certified CDFI with assets of at least \$3 million.

When a loan or investment of funds from the Program is repaid to a QLI, the QLI must offer the repaid funds as new loans or investments consistent with the terms of the Program for a period of 10 years from the date of the grant award.

Review Committee.

Commerce must appoint members to an advisory board that will assist in ranking grant applications. Commerce must seek to achieve a fair geographic balance of committee members and is encouraged to seek representation from members with relevant expertise, including the following: (1) representatives of the banking industry who are familiar with CDFIs; (2) economic development professionals who have experience in rural development; (3) representatives of local government; and (4) representatives of federally recognized Indian tribes.

Grant Criteria.

No more than 25 percent of all grants awarded in any calendar year may be awarded to the same grant recipient. In addition, at least 65 percent of the grant funds awarded each calendar year must be provided to native CDFIs or for grantees to provide services or invest in counties that have fewer than 100 persons per square mile or have an area of less than 225 square miles. Up to 20 percent of each grant award may be used by the grant recipient to fund a loan loss reserve, technical assistance, and small business training programs.

In ranking grant applications, the following criteria must be considered:

- the number and total value of loans and investments closed during the previous five-year period by the QLI in Washington and the percentage of those loans and investments that went to historically underserved communities;
- funds leveraged by the proposed grant award;
- projected loan or investment production with the award over the performance period of the grant;
- how the award supports the growth of the QLI;
- past performance of loans and investments made by the QLI; and
- awards to a diversity of QLIs.

Commerce may include additional criteria as it deems helpful in achieving the goal of ensuring access to credit to underserved communities across the state.

Program Administration.

Up to 5 percent of the Program revenues may be used for staffing and administrative costs incurred by state agencies for implementation of the Program. In any year that the total

amount of B&O tax credits claimed does not reach the statewide limit, the percentage used for administration may be increased as necessary to maintain normal staffing operations, not to exceed 10 percent.

Commerce may contract for all or part of the Program's administration.

Reporting by Qualified Lending Institutions.

A QLI receiving a grant under the Program must submit an annual report to Commerce that includes:

1. a list of loans and investments that provides information on a per-borrower or per-investee basis, including the term and type of loan or investment; the city and county where the funds will be invested; the projected number of jobs created; the entity structure; and whether the investee or borrower is more than 50 percent owned or controlled by one or more minorities, women, or low-income persons;
2. certification that each loan or investment was to historically underserved communities; and
3. other information required by Commerce.

Reporting by the Department of Commerce.

Beginning in 2021, Commerce must submit an annual report to the Legislature that contains the following information:

1. the list of grant applicants, total value of grants requested, and the location of each applicant;
2. the list of grant recipients, total amount of awards, and required match amounts; and
3. aggregated information on loans and investments provided by the QLIs receiving grants.

Business and Occupation Tax Credit.

A tax credit is authorized against B&O taxes otherwise due for persons that contribute to the Program. The maximum credit that may be earned by a person each calendar year is the lesser of \$1 million or 100 percent of contributions made to the Program. No credit may be earned for contributions made to the Program on or after June 30, 2031.

No taxpayer may claim more than \$1 million in a calendar year, and the amount of credit claimed may not exceed the amount of B&O tax due. Credits may be carried over for two years. No refunds may be granted for unused credits.

Credits are available on a first-in-time basis. Revenue must disallow any credits, or portions thereof, that would cause the total amount of credits claimed under the Program for any calendar year to exceed \$8 million. If this limitation is reached, Revenue must notify Commerce that the annual statewide limit has been met. In addition, Revenue must provide written notice to any person who has claimed tax credits in excess of the limitation.

Equitable Access to Credit Program Account.

The Equitable Access to Credit Program Account (Account) is created in the custody of the State Treasurer. Contributions to the Program must be deposited in the Account. Expenditures from the Account may be used only for the award of grants to the QLIs under the Program. Any funds remaining in the Account when the Program expires must be transferred to the State General Fund.

Tax Preference Performance Statement and Expiration Date.

The Program expires on July 1, 2031. The stated intent of the Legislature is to provide a tax preference that creates or retains jobs and encourages community and economic development in communities that have historically lacked access to capital. The stated intent of the Legislature is also to extend the expiration date of the tax preference if a review by the JLARC finds that the Program has a net positive impact on investment in communities historically underserved by credit and on state and local tax revenues.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment reduces the duration of the B&O tax credit from 10 years to five years and specifies that credits may not be claimed prior to January 1, 2023. The Senate amendment also reduces the grant matching requirements for QLIs as follows:

- from 20 percent to 5 percent for emerging CDFIs;
- from 50 percent to 10 percent for CDFIs with net assets fewer than \$3 million; and
- from 100 percent to 25 percent for CDFIs with net assets of at least \$3 million.

The Senate amendment limits the interest rates at which loans or investments can be made by QLIs under the Program to 200 basis points over the Wall Street Journal Prime Rate. It also requires QLIs to offer any repaid funds as new loans or investments consistent with terms of the Program indefinitely, instead of a period of 10 years from the date of the grant award.

In addition, the Senate amendment modifies dates to assume implementation in 2022 rather than 2021.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Consumer Protection & Business):

(In support) Many new and small businesses have funding needs. Community Development Financial Institutions often offer the first available access to credit for small businesses that are struggling or wishing to expand. Many CDFIs are helping small

businesses survive during the pandemic. In addition to financial assistance, CDFIs can provide technical assistance to businesses to increase their likelihood of success and tend to serve more minority-owned businesses than traditional lenders. Tribes are taking steps toward economic development, but additional access to credit is still needed. Many CDFI clients are eventually able to access traditional credit. Currently, CDFIs receive more funding requests than they can fulfill, and more funds are needed to invest in target communities. Major corporations are investing millions of dollars in CDFIs nationwide. This bill would accelerate CDFI growth in Washington. The state has limited options to invest in small businesses with its constitutional restraints on its lending of credit. Instead, Washington uses its tax policy to encourage investments, such as this type of program.

(Opposed) None.

(Other) The pandemic hit small businesses and rural communities hard. Commerce is already distributing funds under the Coronavirus Aid, Relief, and Economic Security Act, and this type of program would complement that funding. Commerce is looking at ways to streamline its role in this program.

Staff Summary of Public Testimony (Finance):

(In support) This idea has been worked on in the past, and this bill represents bipartisan work during the past biennium. Many communities in Washington have struggled with high unemployment and low wages, including the Colville tribal community. The recovery from the generational recession is taking longer in the state's rural areas. There are entrepreneurs with brilliant ideas that are returning to their communities to help schools, the elders, the main street businesses. These entrepreneurs need assistance. This bill creates a framework for the future and provides a movement with an initial kickstart.

Washington has few economic development tools due to the constitutional prohibition on the lending of credit. This program represents an exciting new tool by leveraging a tax benefit to assist in public development. Business and occupation tax credits are used in other areas to promote economic growth, including the motion picture competitiveness program. The federal Paycheck Protection Program did not reach many low income or rural businesses. Community development financial institutions are better at reaching underserved communities, including low income or rural communities. This program will provide funding stability for businesses and communities. Moreover, specifically including native CDFI will help address access to capital and access to credit constraints in native communities. Native CDFI are seeing an increased demand for investments in businesses in these communities.

(Opposed) None.

(Other) These businesses need access to working capital especially since the start of the COVID-19 pandemic. The Washington Recovery Loan Program being administered by

Commerce will provide assistance right now, but this bill is complementary to that program. It will provide long-term sustainable access to capital. Commerce does have some friendly amendments to address the administration of the program.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill would establish a fantastic program for rural Washington. This bill is a request brought by tribes. There are current programs providing access to credit that are operated by tribes. Establishing a state grant program would provide greater access to credit and loans for small businesses working in rural and underrepresented communities as well as those operating on tribal lands. This bill will help the state's economy as it recovers from the pandemic. Tribes support this bill.

(Opposed) None.

Persons Testifying (Consumer Protection & Business): (In support) Representative Maycumber, prime sponsor; Michael Moran, Confederated Tribes of the Colville Reservation; Adam Zimmerman, Craft3; Ted Piccolo, Northwest Native Development Fund; Chuck Depew, National Development Council; Joe Sky-Tucker, Business Impact NW; Emerson Sekins, Northwest Access Fund; and Luke Esser, Kalispel Tribe.

(Other) Keith Swenson, Department of Commerce.

Persons Testifying (Finance): (In support) Representative Maycumber, prime sponsor; Chuck Depew, National Development Council; and Amber Schulz-Oliver, Affiliated Tribes of Northwest Indians Economic Development Corporation.

(Other) Keith Swenson, Department of Commerce.

Persons Testifying (Appropriations): Representative Maycumber, prime sponsor; and Michael Moran, Confederated Tribes of the Colville Reservation.

Persons Signed In To Testify But Not Testifying (Consumer Protection & Business): None.

Persons Signed In To Testify But Not Testifying (Finance): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.