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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1015

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State of Washington

67th Legislature

2021 Regular Session

By House Finance (originally sponsored by Representatives Maycumber, Chapman, Tharinger, Graham, Santos, and Macri)

READ FIRST TIME 02/19/21.

1 AN ACT Relating to creating the Washington equitable access to  
2 credit act; adding a new section to chapter 82.04 RCW; adding a new  
3 chapter to Title 43 RCW; creating a new section; and providing  
4 expiration dates.

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

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

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

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

15 (2)(a) The person must make the contribution before claiming a  
16 credit authorized under this section. The credit may be used against  
17 any tax due under this chapter. The amount of the credit claimed for  
18 a reporting period may not exceed the tax otherwise due under this  
19 chapter for that reporting period. No person may claim more than  
20 \$1,000,000 of credit in any calendar year, including credit carried

1 over from a previous calendar year. No refunds may be granted for any  
2 unused credits.

3 (b) Any amount of tax credit otherwise allowable under this  
4 section not claimed by the person in any calendar year may be carried  
5 forward and claimed against a person's tax liability for the next  
6 succeeding calendar year; and any credit not used in that next  
7 succeeding calendar year may be carried forward and claimed against  
8 the person's tax liability for the second succeeding calendar year,  
9 but may not be carried over for any calendar year thereafter.

10 (3) Credits are available on a first-in-time basis. The  
11 department must disallow any credits, or portions thereof, that would  
12 cause the total amount of credits claimed under this section for any  
13 calendar year to exceed \$8,000,000. If this limitation is reached,  
14 the department must notify the department of commerce that the annual  
15 statewide limit has been met. In addition, the department must  
16 provide written notice to any person who has claimed tax credits in  
17 excess of the limitation in this subsection. The notice must indicate  
18 the amount of tax due and provide the tax be paid within 30 days from  
19 the date of the notice. The department may not assess penalties and  
20 interest as provided in chapter 82.32 RCW on the amount due in the  
21 initial notice if the amount due is paid by the due date specified in  
22 the notice, or any extension thereof.

23 (4) To claim a credit under this section, a person must  
24 electronically file with the department all returns, forms, and any  
25 other information required by the department, in an electronic format  
26 as provided or approved by the department. Any return, form, or  
27 information required to be filed in an electronic format under this  
28 section is not filed until received by the department in electronic  
29 format. As used in this subsection, "returns" has the same meaning as  
30 "return" in RCW 82.32.050.

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

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

38 (7) The maximum credit that may be earned for each calendar year  
39 under this section for a person is limited to the lesser of

1 \$1,000,000 or an amount equal to 100 percent of the contributions  
2 made by the person to the equitable access to credit program.

3 (8) No credit may be earned for contributions made on or after  
4 June 30, 2031. Credits may be claimed as provided in subsections (2)  
5 through (4) of this section.

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

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

11 (11) This section expires July 1, 2031.

12 NEW SECTION. **Sec. 3.** (1) Subject to appropriation, the  
13 department of commerce shall create and operate the equitable access  
14 to credit program. The purpose of the equitable access to credit  
15 program is to award grants to qualified lending institutions, using  
16 funds generated by business and occupation tax credits created in  
17 section 2 of this act, for the purpose of providing access to credit  
18 for historically underserved communities. The equitable access to  
19 credit program must be governed by the provisions of this chapter and  
20 by any guidelines developed and rules adopted by the department of  
21 commerce pursuant to this chapter.

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

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

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

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

33 (d) Beginning in fiscal year 2022, up to five percent of the  
34 program revenues may be used for all agencies' staffing and other  
35 administrative costs related to the implementation of this act. In  
36 the event that the statewide limit in section 2(3) of this act is not  
37 reached, the percentage used for administration may be increased as  
38 necessary to maintain normal staffing operations, not to exceed 10  
39 percent.

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

3 (a) Be recognized by the United States department of the treasury  
4 as:

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

6 (ii) A certified community development financial institution;

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

9 (i) At least a 20 percent basis, if the institution is recognized  
10 by the United States department of the treasury as an emerging  
11 community development financial institution;

12 (ii) At least a 50 percent basis, if the institution:

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

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

17 (iii) At least a one-to-one basis, if the institution:

18 (A) Is recognized by the United States department of the treasury  
19 as a certified emerging community development financial institution;  
20 and

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

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

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

28 (4) The director must appoint members to an advisory board that  
29 will assist the department in ranking applications for the grants.  
30 The department is encouraged to seek representation from members with  
31 relevant expertise, including those from the banking industry  
32 familiar with community development financial institutions, rural  
33 economic development professionals, local government representatives,  
34 and representatives from federally recognized Indian tribes. The  
35 department shall seek, to the greatest extent possible, a fair  
36 geographic balance.

37 (5)(a) The following criteria must be considered in ranking  
38 applications:

39 (i) The number and total value of loans and investments closed  
40 during the previous five-year period by the qualified lending

1 institution in Washington and the percentage of those loans and  
2 investments that went to historically underserved communities;

3 (ii) Funds leveraged by the proposed grant award, which may be no  
4 less than one-to-one for certified community development financial  
5 institutions with net assets of \$3,000,000 or more at the time of the  
6 grant application;

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

9 (iv) How the award supports the growth of the qualified lending  
10 institution;

11 (v) Past performance of loans and investments made by the  
12 qualified lending institution including, where applicable, past  
13 performance of loans and investments made using funds from the  
14 equitable access to credit program; and

15 (vi) Awards to a diversity of qualified lending institution  
16 awardees, including institutions of different sizes or with different  
17 target markets or products, access to historically underserved  
18 communities, or other differentiators that ensure a broad-base access  
19 to capital.

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

23 (6) Grants may be awarded from the equitable access to credit  
24 program beginning six months after the first tax credits are claimed  
25 pursuant to section 2 of this act. Grant awards must cease from the  
26 equitable access to credit program upon the expiration of this  
27 chapter.

28 (7) Once a loan or investment made by a qualified lending  
29 institution using funds awarded from the equitable access to credit  
30 program has been repaid, the qualified lending institution must  
31 reloan the repaid funds consistent with the terms of this chapter for  
32 a period of 10 years from the date of the grant award.

33 (8) A qualified lending institution that receives funds from the  
34 equitable access to credit program must submit a report to the  
35 department of commerce by June 30th of each year that contains the  
36 following information:

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

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

1 (ii) The amount of the loan or investment;  
2 (iii) The total cost of the project, including owner equity and  
3 leverage;  
4 (iv) The interest rate and interest type;  
5 (v) The term;  
6 (vi) The number of permanent full-time equivalent jobs projected  
7 to be created in the business due to this financing;  
8 (vii) Whether the loan or investment utilized a guarantee  
9 program;  
10 (viii) The North American industry classification system code;  
11 (ix) The entity structure;  
12 (x) Whether the investee or borrower is more than 50 percent  
13 owned or controlled by:  
14 (A) One or more minorities;  
15 (B) One or more women; or  
16 (C) One or more low-income persons;  
17 (xi) The race of the primary investee(s) or borrower(s);  
18 (xii) Whether the primary investee or borrower is Hispanic or  
19 Latino; and  
20 (xiii) The location, by city and county, in which funds from the  
21 program will be invested;  
22 (b) Certification that each loan or investment made using funds  
23 from the program was to a historically underserved community; and  
24 (c) Other information as required by the department of commerce.  
25 (9) No later than September 15th of each year, beginning in 2021,  
26 the department of commerce must submit a report to the appropriate  
27 committees of the legislature that contains the following  
28 information:  
29 (a) The list of grant applicants, total value of grants  
30 requested, and the location of each applicant;  
31 (b) The list of grant recipients, total amount of awards, and  
32 required match amounts; and  
33 (c) On an aggregate basis, information on loans and investments  
34 as reported under subsection (8) of this section.  
35 (10) The department may contract for all or part of the  
36 administration of this section.  
37 (11) The department may adopt rules as necessary to implement  
38 this section.

1        NEW SECTION.    **Sec. 4.**    The equitable access to credit program  
2 account is created in the custody of the state treasurer. All  
3 receipts from contributions to the equitable access to credit program  
4 created by this chapter must be deposited in the account.  
5 Expenditures from the account may be used only for the award of  
6 grants to qualified lending institutions from the equitable access to  
7 credit program and administrative costs pursuant to section 3 of this  
8 act. Only the director of the department of commerce or the  
9 director's designee may authorize expenditures from the account. The  
10 account is subject to allotment procedures under chapter 43.88 RCW,  
11 but an appropriation is not required for expenditures. Any funds  
12 remaining in the account upon the expiration of this chapter must be  
13 transferred to the state general fund.

14        NEW SECTION.    **Sec. 5.**    (1) This section is the tax preference  
15 performance statement for the tax preference contained in section 2,  
16 chapter . . . , Laws of 2021 (section 2 of this act). This performance  
17 statement is only intended to be used for subsequent evaluation of  
18 the tax preference. It is not intended to create a private right of  
19 action by any party or to be used to determine eligibility for  
20 preferential tax treatment.

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

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

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

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

38        (b) Overall match, including project leverage, invested by grant  
39 recipients, which should exceed a one-to-one ratio;

- 1 (c) The balance sheet growth of community development financial  
2 institutions that received grants from the program;
- 3 (d) Whether participants in the program achieved balance sheet  
4 growth during the time of their participation in the program;
- 5 (e) The percentage of community development financial  
6 institutions in Washington that received funding from the program;  
7 and
- 8 (f) The level of ongoing demand for funding from the program.
- 9 (5) In order to obtain the data necessary to perform the review  
10 in subsection (4) of this section, the joint legislative audit and  
11 review committee may refer to any data collected by the state.
- 12 (6) This section expires July 1, 2031.

13 NEW SECTION. **Sec. 6.** This chapter expires July 1, 2031.

14 NEW SECTION. **Sec. 7.** Sections 1, 3, 4, and 6 of this act  
15 constitute a new chapter in Title 43 RCW.

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