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**SUBSTITUTE HOUSE BILL 1015**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Consumer Protection & Business (originally sponsored by Representatives Maycumber, Chapman, Tharinger, Graham, Santos, and Macri)

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

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

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

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

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

(2) The person must make the contribution before claiming a credit authorized under this section. The credit may be used against any tax due under this chapter and may be carried over until used. The amount of the credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than one million dollars of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) Credits are available on a first-in-time basis. The department must disallow any credits, or portions thereof, that would cause the total amount of credits claimed under this section for any calendar year to exceed eight million dollars. If this limitation is reached, the department must notify the department of commerce that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

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

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

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

(7) The department may not allow any credit under this section before January 1, 2021.

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

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

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

(11) This section expires July 1, 2031.

NEW SECTION. **Sec.**  (1) The department of commerce shall create and operate the equitable access to credit program. The purpose of the equitable access to credit program is to award grants to qualified lending institutions, using funds generated by business and occupation tax credits created in section 2 of this act, for the purpose of providing access to credit for historically underserved communities. The equitable access to credit program must be governed by the provisions of this chapter and by guidelines and rules adopted by the department of commerce pursuant to this chapter.

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

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

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

(c) At least seventy-five percent of the value of all grants awarded in any calendar year must be provided for grantees to provide services or invest, or both, in rural counties as defined in RCW 82.14.370.

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

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

(i) An emerging community development financial institution; or

(ii) A certified community development financial institution;

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

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

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

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

(B) Has net assets of fewer than three million dollars at the time of the grant application; or

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

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

(B) Has net assets of three million or more dollars at the time of the grant application;

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

(d) Demonstrate a history of lending in Washington.

(4) Grants from the equitable access to credit program to a qualified lending institution will be awarded by a review committee. The department of commerce is responsible for convening and staffing the review committee. The department of commerce shall seek, to the greatest extent possible, to achieve a fair geographic balance in the composition of the review committee. The department of commerce is encouraged to seek representation on the committee from the following: Representatives of the banking industry who are familiar with community development financial institutions; economic development professionals who have experience in rural development; representatives of local government; representatives of federally recognized Indian tribes; and small business representatives who have experience working with community development financial institutions or in rural development.

(5) In making awards from the equitable access to credit program, the review committee must consider the following:

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

(b) Funds leveraged by the proposed grant award, which may be no less than one-to-one for certified community development financial institutions with net assets of three million or more dollars at the time of the grant application;

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

(d) How the award supports the growth of the qualified lending institution;

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

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

(6) The department of commerce may award grants from the equitable access to credit program beginning six months after the first tax credits are claimed pursuant to section 2 of this act. The department of commerce must cease to award grants from the equitable access to credit program upon the expiration of this chapter.

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

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

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

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

(ii) The amount of the loan or investment;

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

(iv) The interest rate and interest type;

(v) The term;

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

(vii) Whether the loan or investment utilized a guarantee program;

(viii) The North American industry classification system code;

(ix) The entity structure;

(x) Whether the investee or borrower is more than fifty percent owned or controlled by:

(A) One or more minorities;

(B) One or more women; or

(C) One or more low-income persons;

(xi) The race of the primary investee(s) or borrower(s);

(xii) Whether the primary investee or borrower is Hispanic or Latino; and

(xiii) The location, by city and county, in which funds from the program will be invested;

(b) Certification that each loan or investment made using funds from the program was to a historically underserved community; and

(c) Other information as required by the department of commerce.

(9) No later than September 15th of each year, beginning in 2021, the department of commerce must submit a report to the appropriate committees of the legislature that contains the following information:

(a) The list of grant applicants, total value of grants requested, and the location of each applicant;

(b) The list of grant recipients, total amount of awards, and required match amounts; and

(c) On an aggregate basis, information on loans and investments as reported under subsection (8) of this section.

NEW SECTION. **Sec.**  The equitable access to credit program account is created in the custody of the state treasurer. All receipts from contributions to the equitable access to credit program created by this chapter must be deposited in the account. Expenditures from the account may be used only for the award of grants to qualified lending institutions from the equitable access to credit program. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Any funds remaining in the account upon the expiration of this chapter must be transferred to the state general fund.

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

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

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

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

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

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

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

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

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

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

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

(6) This section expires July 1, 2031.

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

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

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