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**SECOND SUBSTITUTE HOUSE BILL 1324**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Finance (originally sponsored by Representatives Chapman, Maycumber, Springer, Chandler, Blake, Stokesbary, Steele, Reeves, Pettigrew, Dolan, Volz, Barkis, Eslick, Lekanoff, Tharinger, Hoff, Jinkins, Kilduff, and Leavitt)

AN ACT Relating to creating the Washington rural development and opportunity zone act; amending RCW 82.04.260 and 82.04.261; adding a new section to chapter 48.14 RCW; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW; creating new sections; and providing expiration dates.

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

NEW SECTION. **Sec.**  The legislature finds that while many parts of the state are thriving economically, some rural and distressed communities have struggled to keep pace. These communities represent significant opportunity for economic growth and innovation. However, businesses and entrepreneurs often find it difficult to obtain the capital they need to expand and grow in these areas. Therefore, it is the intent of the legislature to incentivize private investments and job creation in rural and distressed communities while ensuring no loss of revenue to the state.

NEW SECTION. **Sec.**  TAX PREFERENCE PERFORMANCE STATEMENT. (1) This section is the tax preference performance statement for the tax preferences created in sections 7 and 13, chapter . . ., Laws of 2019 (sections 7 and 13 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference.

(2) The legislature categorizes these tax preferences as ones intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(3) It is the legislature's specific public policy objective to create and retain jobs in rural development and opportunity zone areas of Washington. It is the legislature's intent to provide a vested tax credit that may be used to offset certain business and occupation taxes under chapter 82.04 RCW, and insurance premium taxes under chapter 48.14 RCW owed by Washington taxpayers, in order to induce such taxpayers to invest in rural development and opportunity zone funds whose management teams:

(a) Have experience investing in companies located in rural development and opportunity zone areas;

(b) Have been vetted by the United States small business administration or the United States department of agriculture; and

(c) Have submitted a business plan that:

(i) Projects the number of jobs that will be created or retained as a result of such investment fund's investments in rural companies and includes the assumptions used to determine the projection; and

(ii) Includes a revenue impact assessment that demonstrates that the business plan will result in a positive economic impact on Washington state over a ten-year period that exceeds the cumulative amount of tax credits that would be issued to the investment fund's investors, thereby:

(A) Enabling the capitalization of rural development and opportunity zone funds;

(B) Incentivizing and requiring rural development and opportunity zone funds to invest in companies located in rural areas of Washington; and

(C) Enabling the creation or retention of jobs in rural development and opportunity zone areas of Washington.

(4) If the joint legislative audit and review committee finds that the aggregate number of jobs created or retained matches or exceeds the aggregate number of jobs set forth in the business plans of approved rural development and opportunity zone funds, in the six years following enactment of these tax preferences, then the legislature intends to continue the tax preferences created in sections 7 and 13, chapter . . ., Laws of 2019 (sections 7 and 13 of this act).

(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:

(a) The annual report that a taxpayer claiming the tax credit in section 13 of this act must file with the department of revenue under RCW 82.32.534; and

(b) The annual reports required under section 11 of this act.

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be known and cited as the Washington rural development and opportunity zone act.

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

(1) "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this chapter, "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(2) "Average monthly employment" means the cumulative number of full-time employees on the last day of each month of a calendar year divided by twelve.

(3) "Closing date" means the date on which a rural development and opportunity zone fund has collected all of the amounts specified by section 5 of this act.

(4) "Credit-eligible capital contribution" means an investment of cash by a person who, as of the closing date, is subject to (a) business and occupation taxes under chapter 82.04 RCW and/or (b) insurance premium taxes under chapter 48.14 RCW in a rural development and opportunity zone fund that equals the amount specified on a tax credit certificate issued by the department under section 5 of this act. The investment must purchase an equity interest in the rural development and opportunity zone fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date and a repayment schedule that is no faster than level principal amortization over five years.

(5) "Department" means the department of commerce.

(6) "Full-time employee" means an employment position that requires at least thirty-five hours of work each week.

(7) "Growth investment" means any capital or equity investment in a targeted small business or any loan to a targeted small business with a stated maturity at least one year after the date of issuance.

(8) "Investment authority" means the amount stated on the written approval issued under section 5(8) of this act certifying the rural development and opportunity zone fund. At least sixty percent of a rural development and opportunity zone fund's investment authority must be comprised of credit-eligible capital contributions.

(9) "Investor" also means "taxpayer."

(10) "Jobs created" means the number of full-time employees in the state at the targeted small business at the time of the initial growth investment subtracted from the monthly average of those employment positions for that year.

(11) "Jobs retained" means the number of full-time employees in the state at a targeted small business that existed before the initial growth investment in the targeted small business, for which the rural development and opportunity zone fund has obtained a certification from an executive officer of the targeted small businesses that such jobs would have been lost or moved out of state if the growth investment had not been made.

(12) "NAICS code" means the North American industry classification system code used by federal statistical agencies and the state in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the business economy.

(13) "Principal business operations" means a business located at the place or places where at least sixty percent of its employees work or where employees that are paid at least sixty percent of its payroll work. An out-of-state business that has agreed to relocate employees or an in-state business that has agreed to hire full-time employees using the proceeds of a growth investment to establish its principal business operations in a qualified area in the state is deemed to have its principal business operations in this new location provided it satisfies this definition within one hundred eighty days after receiving the growth investment, unless the department agrees to a later date.

(14) "Qualified area" means:

(a) A county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th; or

(b) A qualified opportunity zone as defined by Title 26 U.S.C. Sec. 1400Z-1 of the federal internal revenue code of 1986, as amended.

(15) "Rural development and opportunity zone fund" or "fund" means an entity certified by the department under section 5 of this act.

(16) "Targeted small business" means a business that, at the time of the initial investment in the company by a rural development and opportunity zone fund:

(a) Has less than two hundred fifty employees and not more than ten million dollars in net income for the preceding calendar year;

(b) Has its principal business operations in one or more qualified areas in the state; and

(c) Is engaged in industries related to manufacturing, plant sciences, services, distribution, warehousing, farming, forestry, biotechnology, fisheries, biofuels, technology, or the marketing and sale of technology, business that supplies inputs for agriculture and food industry, agricultural primary production, feed industry, branded or other food production, or if the business is not engaged in such industries, the department makes a determination that the investment will be highly beneficial to the economic growth of the state.

NEW SECTION. **Sec.**  TAX CREDIT APPLICATION, APPROVAL, AND ALLOCATIONS. (1) Beginning January 1, 2020, the department must accept applications for approval as a rural development and opportunity zone fund. The application must include all of the following:

(a) The total investment authority sought by the applicant under the business plan;

(b) A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company under Title 7 U.S.C. Sec. 2009cc, as amended, as of January 1, 2019, or as a small business investment company under Title 15 U.S.C. Sec. 681, as amended, as of January 1, 2019;

(i) Evidence that, as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least one hundred fifty million dollars in nonpublic companies located in areas within or without the state of Washington that would be qualified areas if in Washington; and

(ii) At least one principal in a rural investment company or small business investment company is, or has been for at least four years, an officer or employee of the applicant or an affiliate of the applicant on the date of the submission.

(c) An estimate of the number of jobs created and jobs retained in this state as a result of the applicant's growth investments and the assumptions used to determine the estimate;

(d) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed growth investments prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the ten years following the date the application is submitted to the department;

(e) A signed affidavit from each investor stating the amount of credit-eligible capital contributions each taxpayer commits to make and against which of the two tax types the investor plans to apply the credit:

(i) Business and occupation taxes under chapter 82.04 RCW; or

(ii) Insurance premium taxes under chapter 48.14 RCW; and

(f) A nonrefundable application fee of five thousand dollars.

(2) The department must make an application determination within thirty days of receipt in the order in which the applications are received. The department must deem applications received on the same day to have been received simultaneously.

(3) The department may not approve more than one hundred million dollars in investment authority and not more than sixty million dollars in credit-eligible capital contributions under this section. If requests for investment authority exceed this limitation, the department must proportionally reduce the investment authority and the credit-eligible capital contributions for each approved application as necessary to avoid exceeding the limit.

(4) The department may not approve more than thirty-five million dollars in investment authority and not more than twenty-one million dollars in credit-eligible capital contributions for an applicant under this section. If fewer than three applicants have been approved as a rural development and opportunity zone fund under this section by November 1, 2020, a rural development and opportunity zone fund may apply for additional investment authority and capital contributions in excess of the limit under this subsection.

(5) The department must deny an application submitted under this section if any of the following are true:

(a) The application is incomplete or the application fee is not paid in full;

(b) The applicant does not satisfy all the criteria described in subsection (1)(b) of this section;

(c) The revenue impact assessment submitted under subsection (1)(d) of this section does not demonstrate that the applicant's business plan will result in a positive economic impact on aggregate state and local government revenue over a ten-year period that exceeds the cumulative amount of tax credits that would be issued to the applicant's investors under section 7 or 13 of this act if the application were approved;

(d) The credit-eligible capital contributions described in affidavits submitted under subsection (1)(e) of this section do not equal at least sixty percent of the total amount of investment authority sought under the applicant's business plan; or

(e) The department has already approved the maximum amount of investment authority and credit-eligible capital contributions allowed under subsections (3) and (4) of this section.

(6) If the department denies an application, the applicant may provide additional information to the department to complete, clarify, or cure defects in the application identified by the department, except for failure to make the submission required by subsection (1)(e) of this section, within fifteen days of the notice of denial for reconsideration and determination. The department must review and reconsider such applications within thirty days before any pending application submitted after the original submission date of the reconsidered application.

(7) The department may not deny a rural development and opportunity zone fund application or reduce the requested investment authority for reasons other than those described in subsections (3) through (5) of this section.

(8) Upon approval of an application, the department must provide a written approval to the applicant as a rural development and opportunity zone fund specifying the amount of the applicant's investment authority.

(9) After receiving the approval issued under subsection (8) of this section, a rural development and opportunity zone fund must:

(a) Within sixty days:

(i) Collect the credit-eligible capital contributions from each investor; and

(ii) Collect one or more investments of cash that, when added to the contributions collected under (a)(i) of this subsection, equal the rural development and opportunity zone fund's investment authority. An amount equal to at least ten percent of the rural development and opportunity zone fund's investment authority must be equity investments by affiliates of the rural development and opportunity zone fund, including employees, officers, and directors of affiliates.

(b) Within sixty-five days, send to the department documentation sufficient to prove that the amounts described in (a)(i) and (ii) of this subsection have been collected.

(10) Upon receiving documentation from the rural development and opportunity zone fund that it is fully funded, the department must issue a tax credit certificate to each investor whose affidavit was included in the application specifying the amount of the investor's credit-eligible capital contribution. The department must provide a copy of the tax credit certificates to the office of the insurance commissioner for investors earning tax credits eligible for use against insurance premium taxes, including the retaliatory provision, imposed under chapter 48.14 RCW, and to the department of revenue for investors earning tax credits eligible for use against business and occupation taxes imposed under chapter 82.04 RCW. The tax credit certificate must include:

(a) The credit-eligible capital contribution amount;

(b) The name of the rural development and opportunity zone fund;

(c) The unified business identifier number of the investor; and

(d) The closing date of the rural development and opportunity zone fund.

(11) Tax credits may be transferred or allocated to an affiliate of the taxpayer. Taxpayers must notify the department if they wish to transfer or allocate a credit to an affiliate. The department will verify the transfer is to an affiliate and then issue an amended tax credit certificate to the taxpayer and a new tax credit certificate to the affiliate. The department must provide the department of revenue and the office of the insurance commissioner with a copy of the amended tax credit certificate of the transferor and the new tax credit certificate of the transferee.

(12) If the rural development and opportunity zone fund fails to fully comply with subsection (9) of this section, the rural development and opportunity zone fund's approval lapses and the corresponding investment authority and credit-eligible capital contributions under this subsection do not count toward the limits on the program size prescribed by subsection (3) of this section. The department must first award lapsed investment authority pro rata to each rural development and opportunity zone fund that was awarded less than the requested investment authority under subsection (3) of this section, which a rural development and opportunity zone fund may allocate to its investors in its discretion. Any remaining investment authority may be awarded by the department to new applicants.

(13) Application fees submitted to the department under subsection (1)(f) of this section must be deposited in the rural development and opportunity zone account created in section 6 of this act.

NEW SECTION. **Sec.**  RURAL DEVELOPMENT AND OPPORTUNITY ZONE ACCOUNT. The rural development and opportunity zone account is created in the state treasury. All receipts from application fees submitted to the department under section 5 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department only for administering this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 48.14 RCW to read as follows:

INSURANCE PREMIUM TAX CREDIT ESTABLISHED.

(1) A tax credit is authorized against the tax, including the retaliatory provision, otherwise due under this chapter for persons that made a credit-eligible capital contribution to a rural development and opportunity zone fund and were issued a tax credit certificate under section 5 of this act.

(2) A taxpayer earns a credit on the closing date noted on the taxpayer's tax credit certificate issued under section 5 of this act. The credit is equal to the amount of the taxpayer's credit-eligible capital contribution to the rural development and opportunity zone fund as specified on the tax credit certificate.

(3) The taxpayer may claim up to one-third of the credit authorized under this section for each of the calendar years that includes the fourth through sixth anniversaries of the closing date noted on the tax credit certificate, exclusive of amounts carried forward from prior years.

(4) The amount claimed for a tax reporting period may not exceed the amount of tax otherwise due under this chapter for that reporting period. Unused credits may be carried forward until used, even if claimed after the expiration date of this section. No refunds may be granted for credits under this section.

(5) All persons claiming a credit under this section must file electronically with the office of the insurance commissioner all returns, other forms, or any other information as may be required by the office of the insurance commissioner.

(6) A taxpayer claiming a credit under this section must submit a copy of the tax credit certificate issued to the taxpayer under section 5 of this act to the office of the insurance commissioner when filing the first return in which the taxpayer will claim a credit against taxes due under this chapter.

(7) The credit may not be transferred or allocated to any other entity other than an affiliate subject to the insurance premium, including retaliatory provisions, imposed under this chapter. The department must provide the office of the insurance commissioner with a copy of the amended tax credit certificate of the transferor and the new tax credit certificate of the transferee. The office of the insurance commissioner must disallow tax credits claimed by any transferee other than an affiliate of the transferor.

(8) The department must notify the office of the insurance commissioner if a tax credit certificate was revoked as provided in section 8 of this act. Upon such notice, the office of the insurance commissioner must:

(a) Provide written notice to the taxpayer or any affiliate to which the credit was transferred that the credit was revoked by the department;

(b) Include in the notice the amount of all credits previously claimed and that such amount be paid in full within thirty days of the date of the notice. If the taxpayer or the affiliate fails to pay the amount in full by the due date in the notice or any extension granted by the office of the insurance commissioner, the office of the insurance commissioner must impose penalties and interest consistent with RCW 48.14.060; and

(c) Deny any further use of the tax credit certificate by the taxpayer or any affiliate to which the credit was transferred.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this section, "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Credit-eligible capital contribution" means an investment of cash by a person subject to (a) business and occupation taxes under chapter 82.04 RCW and/or (b) insurance premium taxes under chapter 48.14 RCW in a rural development and opportunity zone fund that equals the amount specified on a tax credit certificate issued by the department of commerce under section 5 of this act. The investment must purchase an equity interest in the rural development and opportunity zone fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date and a repayment schedule that is no faster than level principal amortization over five years.

(c) "Rural development and opportunity zone fund" means an entity certified by the department of commerce under section 5 of this act.

(10) This section expires July 1, 2025.

NEW SECTION. **Sec.**  REVOCATION OF TAX CREDIT CERTIFICATES AND EXIT. (1) The department must revoke a tax credit certificate issued under section 5 of this act if any of the following occur with respect to a rural development and opportunity zone fund before it exits the program in accordance with subsection (4) of this section:

(a) The rural development and opportunity zone fund in which the credit-eligible capital contribution was made does not invest seventy-five percent of its investment authority in growth investments in this state within two years of the closing date and one hundred percent of its investment authority in growth investments in this state within three years of the closing date;

(b) The rural development and opportunity zone fund, after satisfying (a) of this subsection, fails to maintain growth investments equal to one hundred percent of its investment authority until the sixth anniversary of the closing date. For the purposes of this subsection, an investment is "maintained" even if the investment is sold or repaid so long as the rural development and opportunity zone fund reinvests an amount equal to the capital returned or recovered by the rural development and opportunity zone fund from the original investment, exclusive of any profits realized, in other growth investments in this state within twelve months of the receipt of such capital. Amounts received periodically by a rural development and opportunity zone fund must be treated as continually invested in growth investments if the amounts are reinvested in one or more growth investments by the end of the following calendar year;

(c) The rural development and opportunity zone fund, before exiting the program in accordance with subsection (4) of this section, makes a distribution or payment that results in the rural development and opportunity zone fund having less than one hundred percent of its investment authority invested in growth investments in this state or available for investment in growth investments and held in cash and other marketable securities;

(d) The rural development and opportunity zone fund invests more than the greater of five million dollars or twenty percent of its investment authority in the same targeted small business, including amounts invested in affiliates of the targeted small business, exclusive of repaid or redeemed growth investments that are reinvested in the same small targeted small business; or

(e) The rural development and opportunity zone fund makes a growth investment in a targeted small business that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the rural development and opportunity zone fund, an affiliate of the rural development and opportunity zone fund, or an investor in the rural development and opportunity zone fund. This subsection does not apply to investments in publicly traded securities by a targeted small business or an owner or affiliate of such business. For purposes of this subsection, a rural development and opportunity zone fund will not be considered an affiliate of a targeted small business solely as a result of its growth investment.

(2) Before revoking one or more tax credit certificates under this subsection, the department must notify the rural development and opportunity zone fund of the reasons for the pending revocation. The rural development and opportunity zone fund has ninety days from the date the notice was dispatched to correct any violation outlined in the notice to the satisfaction of the department and avoid revocation of the tax credit certificate.

(3) If tax credit certificates are revoked under this section, the associated investment authority and credit-eligible capital contributions do not count toward the limit on total investment authority and credit-eligible capital contributions described by section 5(3) of this act. The department must first award reverted authority pro rata to each rural development and opportunity zone fund that was awarded less than the requested investment authority under section 5(3) of this act. The department may award any remaining investment authority to new applicants.

(4) On or after the sixth anniversary of the closing date, a rural development and opportunity zone fund may apply to the department to exit the program and no longer be subject to regulation under this chapter. The department must respond to the application within thirty days of receipt. In evaluating the application, the fact that no tax credit certificates have been revoked and that the rural development and opportunity zone fund has not received a notice of revocation that has not been cured under subsection (2) of this section is sufficient evidence to prove that the rural development and opportunity zone fund is eligible for exit. The department may not unreasonably deny an application submitted under this subsection. If the application is denied, the notice must include the reasons for the determination. The department must notify the office of the insurance commissioner and the department of revenue when a rural development and opportunity zone fund exits the program.

(5) The department may not revoke a tax credit certificate after a rural development and opportunity zone fund exits the program.

NEW SECTION. **Sec.**  (1) Before approving the exit of a rural development and opportunity zone fund from the program, the department must evaluate the number of jobs created and jobs retained by the rural development and opportunity zone fund, and the aggregate state and local government revenues generated by growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program, and determine whether the rural development and opportunity zone fund must repay to the state any portion of the credit as described in subsections (2) and (3) of this section.

(2) For the number of jobs created and jobs retained by the rural development and opportunity zone fund:

(a) If the number of jobs created and jobs retained as a result of the rural development and opportunity zone fund's investments is less than sixty percent of the amount filed as part of the rural development and opportunity zone fund's application, the rural development and opportunity zone fund must repay to the state sixty percent of the amount of the tax credit certificates issued to investors in the fund;

(b) If the number of jobs created and jobs retained as a result of the rural development and opportunity zone fund's investments is less than eighty percent but more than sixty percent of the amount filed as part of the rural development and opportunity zone fund's application, the rural development and opportunity zone fund must repay to the state thirty percent of the amount of the tax credit certificates issued to investors in the rural development and opportunity zone fund; and

(c) In measuring jobs created and jobs retained as a result of the rural development and opportunity zone fund's growth investments, the department must prorate the number of jobs set forth in the rural development and opportunity zone fund's business plan based upon the amount of investment authority requested in the rural development and opportunity zone fund's application.

(3) For the aggregate state and local government revenues generated by growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program, if the amount of aggregate state and local government revenue generated by growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program over the course of the rural development and opportunity zone fund's participation in the program is less than the cumulative amount of tax credits that were issued to the rural development and opportunity zone fund's investors under section 7 or 13 of this act, the rural development and opportunity zone fund must repay to the state one hundred percent of the difference between the cumulative amount of tax credits that were issued to the rural development and opportunity zone fund's investors under section 7 or 13 of this act and the actual aggregate state and local government revenues generated by growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program.

(a) For purposes of this subsection, the actual aggregate state and local government revenues generated by growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program must be calculated by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the rural development and opportunity zone fund's growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program.

(b) For purposes of this subsection, "growth investments made pursuant to, or related to, the rural development and opportunity zone fund's participation in the program" means those investments made by the rural development and opportunity zone fund in targeted small businesses in qualified areas as part of the fund's investment authority under the program, as well as any additional investments the rural development and opportunity zone fund made in those targeted small businesses in qualified areas using sources of capital not included within the rural development and opportunity zone fund's investment authority under the program.

(4) The department must provide written notice to the rural development and opportunity zone fund of any repayment due under this section. The rural development and opportunity zone fund must submit payment to the department of revenue within thirty days of the date of that notice. If the rural development and opportunity zone fund fails to pay the full amount by the due date in the notice or any extension granted by the department of revenue, the department of revenue must impose penalties and interest as provided under chapter 82.32 RCW.

NEW SECTION. **Sec.**  REQUEST FOR DETERMINATION. A rural development and opportunity zone fund, before making a growth investment, may request from the department a written opinion as to whether the business in which it proposed to invest is a targeted small business. The department, not later than the fifteenth business day after the date of receipt of the request, must notify the rural development and opportunity zone fund of its determination. If the department fails to notify the rural development and opportunity zone fund by the fifteenth business day of its determination, the business in which the rural development and opportunity zone fund proposes to invest must be considered a targeted small business.

NEW SECTION. **Sec.**  REPORTING OBLIGATIONS. (1) Each rural development and opportunity zone fund must submit a report to the department on or before the fifth business day after each anniversary of the closing date until the rural development and opportunity zone fund has exited the program in accordance with section 8(4) of this act. The report must provide documentation as to the rural development and opportunity zone fund's growth investments and include:

(a) A bank statement evidencing each growth investment;

(b) The name and location of principal operations;

(c) Industry NAICS code of each business receiving a growth investment, including either the determination letter set forth in section 10 of this act or evidence that the business qualified as a targeted small business at the time the investment was made;

(d) The number of jobs created or retained as a result of the rural development and opportunity zone fund's growth investments as of the last day of the preceding calendar year and the assumptions used to determine the number of employment positions;

(e) The average annual salary of the positions described in (c) of this subsection; and

(f) Any other information required by the department.

(2) The department must consult with staff of the joint legislative audit and review committee when developing the specific format and questions included in the accountability report to ensure it provides the information needed for performance evaluations under chapter 43.136 RCW.

(3) By January 1, 2020, and annually thereafter, the department must submit a report to the economic development committees of the legislature that includes the following:

(a) The names of the applicants approved and the amount and type of credit allocated to investors in the rural development and opportunity zone fund;

(b) The criteria used to select the applicants approved under section 5 of this act; and

(c) A summary of the information reported by each rural development and opportunity zone fund under subsection (1) of this section.

NEW SECTION. **Sec.**  The department must adopt rules necessary to implement this chapter.

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

BUSINESS AND OCCUPATION TAX CREDIT ESTABLISHED.

(1) A tax credit is authorized against tax otherwise due under this chapter for persons that made a credit-eligible capital contribution to a rural development and opportunity zone fund and were issued a tax credit certificate under section 5 of this act.

(2) A taxpayer earns a credit on the closing date noted on the taxpayer's tax credit certificate issued under section 5 of this act. The credit is equal to the amount of the taxpayer's credit-eligible capital contribution to the rural development and opportunity zone fund as specified on the tax credit certificate.

(3) The taxpayer may claim up to one-third of the credit authorized under this section for each of the calendar years that includes the fourth through sixth anniversaries of the closing date noted on the tax credit certificate, exclusive of amounts carried forward from prior years.

(4) The amount claimed for a tax reporting period may not exceed the amount of tax otherwise due under this chapter for that reporting period. Unused credits may be carried forward until used, even if claimed after the expiration date of this section. No refunds may be granted for credits under this section.

(5) All persons claiming a credit under this section must file electronically with the department all returns, other forms, or any other information as may be required by the department.

(6) A taxpayer claiming a credit under this section must submit a copy of the tax credit certificate issued to the taxpayer under section 5 of this act to the department when filing the first return in which the taxpayer will claim a credit against taxes due under this chapter.

(7) The credit may not be transferred or allocated to any other entity other than an affiliate subject to the business and occupation taxes imposed under this chapter. The department of commerce must provide the department with a copy of the amended tax credit certificate of the transferor and the new tax credit certificate of the transferee. The department must disallow tax credits claimed by any transferee other than an affiliate of the transferor.

(8) The department of commerce must notify the department if a tax credit certificate was revoked as provided in section 8 of this act. Upon such notice, the department of commerce must:

(a) Provide written notice to the taxpayer or any affiliate to which the credit was transferred that the credit was revoked by the department;

(b) Include in the notice the amount of all credits previously claimed and that such amount be paid in full within thirty days of the date of the notice. If the taxpayer or the affiliate fails to pay the amount in full by the due date in the notice or any extension granted by the department, the department must impose penalties and interest as provided under chapter 82.32 RCW; and

(c) Deny any further use of the tax credit certificate by the taxpayer or any affiliate to which the credit was transferred.

(9) A taxpayer claiming the tax credit against taxes due under this chapter must file a complete annual report with the department under RCW 82.32.534.

(10) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity. For the purposes of this section, "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Credit-eligible capital contribution" means an investment of cash by a person subject to (a) business and occupation taxes under chapter 82.04 RCW and/or (b) insurance premium taxes under chapter 48.14 RCW in a rural development and opportunity zone fund that equals the amount specified on a tax credit certificate issued by the department of commerce under section 5 of this act. The investment must purchase an equity interest in the rural development and opportunity zone fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date and a repayment schedule that is no faster than level principal amortization over five years.

(c) "Rural development and opportunity zone fund" means an entity certified by the department of commerce under section 5 of this act.

(11) This section expires July 1, 2025.

NEW SECTION. **Sec.**  (1) The legislature finds that the Washington state forest practices habitat conservation plan was approved in 2006 by the United States fish and wildlife service and the national oceanic and atmospheric administration's marine fisheries service. The legislature further finds that the conservation plan protects habitat of aquatic species, supports economically viable and healthy forests, and creates regulatory stability for landowners. The legislature further finds that funding for the adaptive management program and participation grants are required to implement the forest and fish agreement and meet the goals of the conservation plan. The legislature further finds that the surcharge on the timber products business and occupation tax rate was agreed to by the forest products industry, tribal leaders, and stakeholders as a way to provide funding and safeguard the future of the conservation plan. The legislature further finds that the forestry industry assumed significant financial obligation with the enactment of this conservation plan, in exchange for operational certainty under the endangered species act. Therefore, the legislature concludes that the timber products business and occupation tax rate and the surcharge should continue until the expiration date of the forest and fish agreement, in 2056.

(2) The legislature finds that Washington has one of the strongest economies in the country. However, the local economies in some rural counties continue to struggle. The legislature further finds that the economic prosperity of our state must be shared by all of our communities. The legislature further finds that forest product sectors provide family-wage jobs in economically struggling areas of the state. The legislature further finds that in 2017 the Washington forest products industry, directly and indirectly, employed one hundred one thousand workers, earning 5.5 billion dollars in wages. Therefore, the legislature concludes that the forest products industries support our local rural economies and contribute towards the effort to lower unemployment rates across the state, especially in rural areas.

**Sec.**  RCW 82.04.260 and 2018 c 164 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2025, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Except as provided otherwise in (c)(iii) of this subsection, from July 1, 2025, until January 1, 2036, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2025, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products; and

(e) Wood biomass fuel; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent. For the purposes of this section, "wood biomass fuel" means a liquid or gaseous fuel that is produced from lignocellulosic feedstocks, including wood, forest, ((~~[or]~~)) or field residue((~~,~~)) and dedicated energy crops, and that does not include wood treated with chemical preservations such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual tax performance report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(12)(a) Until July 1, ((~~2024~~)) 2036, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, ((~~2024~~)) 2036.

(b) Until July 1, ((~~2024~~)) 2036, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, ((~~2024~~)) 2036.

(c) Until July 1, ((~~2024~~)) 2036, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, ((~~2024~~)) 2036.

(d) Until July 1, ((~~2024~~)) 2036, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum‑based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual tax performance report with the department under RCW 82.32.534.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.35 percent until July 1, 2024, and 0.484 percent thereafter.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual tax performance report with the department under RCW 82.32.534.

**Sec.**  RCW 82.04.261 and 2017 c 323 s 501 are each amended to read as follows:

(1) In addition to the taxes imposed under RCW 82.04.260(12), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260(12) (a), (b), (c), and (d). ((~~The surcharge and this section expire July 1, 2024.~~))

(2) All receipts from the surcharge imposed under this section must be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section is suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report‑related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge is imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) takes effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report‑related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge is imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report‑related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department must adjust the surcharge in accordance with this subsection.

(b) The department must adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge takes effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge is imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and may not be used to challenge the validity of the surcharge imposed under this section.

(f) The department must provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management must make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities.

(6) This section expires July 1, 2036.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.808 do not apply to sections 15 and 16 of this act.

NEW SECTION. **Sec.**  Sections 1 through 6, 8 through 12, and 19 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  This chapter expires July 1, 2025.

**--- END ---**