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**SENATE BILL 5084**

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

**By** Senators McCoy, Kuderer, and Saldaña

AN ACT Relating to the creation of the Washington community development authority; amending RCW 82.08.053; and adding a new chapter to Title 43 RCW.

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

NEW SECTION. **Sec.**  (1) The legislature finds that community organizations strongly rooted in poor communities of color and in poor rural communities have the cultural understanding, imagination, and vision to create capital assets and develop programs that will help reduce poverty and build stronger and more sustainable communities.

(2) The legislature finds that these organizations currently face structural barriers when seeking local, state, and federal capital funds. Those barriers have left many of these communities without the development capacity and capital assets other communities have been able to establish in recent years.

(3) The legislature further finds and acknowledges the need for a statewide authority to provide financing to foster development capacity and support capital projects within identified impacted communities.

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

(1) "Community" means a group of people who reside or work within a geographic area and who currently or historically share a distinct cultural identity or local history.

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

(3) "Director" means the director of the department.

(4) "Eligible organizations" means local community-based nonprofit organizations and Washington community development authorities that serve impacted communities.

(5) "Impacted community" means a community of color or rural community that has been adversely impacted by poverty.

(6) "Washington community development authority" or "authority" means an authority created by organizations that serve impacted communities.

NEW SECTION. **Sec.**  (1) The Washington community development authority is hereby created as a statewide public corporation for the overall purpose of developing and coordinating public and private resources targeted to assist eligible organizations in impacted communities with the financing of capital projects and related economic development activities. The department shall serve as the fiduciary agent for the authority's funds when appropriated by the state.

(2) The affairs of the authority are managed by a board of directors, consisting of representatives of member organizations that provide services within impacted communities.

(3) Members of the authority and its board will be determined as defined in the authority's bylaws. The board shall submit three recommendations to the governor for appointment as chair of the board. The governor shall appoint a chair of the board at least six months prior to the conclusion of the term of each chair.

(4) The authority, in addition to the purpose stated in subsection (1) of this section, has the following purposes:

(a) To revitalize, enhance, and preserve the unique character of impacted communities;

(b) To allow poor communities of color and poor rural communities to build the capacity to meet the needs of their communities;

(c) To restore a local area's sense of community;

(d) To reduce the displacement of community members and businesses;

(e) To stimulate the community's economic vitality;

(f) To enhance vital public services;

(g) To improve the standard of living of residents and the business environment in impacted communities by constructing and managing the types of self-determined assets that are essential to reducing poverty, such as affordable housing, business development, and community facilities; and

(h) To reduce poverty.

NEW SECTION. **Sec.**  (1) The authority has the power to:

(a) Accept gifts, grants, loans, or other aid from public and private entities;

(b) Employ and appoint such agents, attorneys, officers, and employees as may be necessary to implement the purposes and duties of an authority;

(c) Contract and enter into partnerships with individuals, associations, corporations, and local, state, and federal governments;

(d) Buy, own, lease, and sell real and personal property;

(e) Hold in trust, improve, and develop land;

(f) Invest, deposit, and reinvest its funds;

(g) Issue negotiable bonds and notes in conformance with applicable provisions of the Uniform Commercial Code and state law in such principal amounts as, in the discretion of the authority, are appropriate to provide sufficient funds for achieving any authority purposes or to secure financial assistance, including matching funds from the United States, a state, and any political subdivision or agency of either, for authority projects and activities;

(h) Incur debt in furtherance of its mission;

(i) Enter into agreements with public or private entities, including partnership agreements and limited liability company agreements to implement within the boundaries of impacted communities the federal new markets tax credit program established by the community renewal tax relief act of 2000, 26 U.S.C. Sec. 45D, or its successor statute or other federal tax credit programs such as the low-income housing tax credit program;

(j) Lend or grant its funds for any lawful purposes. For purposes of this section, "lawful purposes" includes without limitation, any use of funds, including loans thereof to public or private parties, authorized by agreements with the United States or any department or agency thereof under which federal or private funds are obtained, or authorized under federal laws and regulations pertinent to such agreements; and

(k) Exercise such additional powers as may be authorized by law.

(2) The authority has no power of eminent domain nor any power to levy taxes or special assessments.

(3) Except for federal funds, all public funds accepted under subsection (1)(a) of this section:

(a) Are subject in all respects to Article VIII, section 5 or 7, as appropriate, of the state Constitution, and RCW 42.17A.550; and

(b) May not be used to support or oppose a candidate, ballot proposition, political party, or political committee.

(4) The authority, using funds specifically appropriated for such purpose, through the department, shall finance in whole or in part the operations of the authority and its allocations to projects that assist eligible organizations with financing for technical assistance, capital projects, and community benefit projects in impacted communities.

NEW SECTION. **Sec.**  The authority has the duty to:

(1) Work with local organizations to create community growth plans;

(2) Identify and assist with the implementation of selected capital projects;

(3) Submit a list of projects recommended for funding to the legislature;

(4) Use gifts, grants, loans, and other aid from public or private entities to carry out selected projects;

(5) Maintain books and records as appropriate for the conduct of its affairs; and

(6) Demonstrate ongoing accountability for its actions by reporting to the governor and the legislature on the authority's activities and accomplishments.

NEW SECTION. **Sec.**  Organizations that may receive assistance from the department under this chapter are local community-based nonprofit organizations and community development authorities that serve impacted communities. Eligibility for assistance from the department under this chapter also requires compliance with revenue and taxation laws, as applicable to the recipient, at the time the funding is made.

NEW SECTION. **Sec.**  The Washington community development authority account is created in the custody of the state treasurer. The account shall include revenue from the sources established by this chapter, appropriations by the legislature, private contributions, repayment of loans, and all other sources. Expenditures from the account may be used only for authority operations and projects under this chapter. Only the director 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.

NEW SECTION. **Sec.**  The authority may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the authority and spend gifts, grants, or endowments or income from public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violate RCW 42.17A.560.

**Sec.**  RCW 82.08.053 and 2017 3rd sp.s. c 28 s 202 are each amended to read as follows:

(1)(a)(i) Except as provided in (a)(ii) of this subsection, beginning January 1, 2018, and for any calendar year thereafter, remote sellers, referrers, and marketplace facilitators meeting the criteria in subsection (2) of this section or that have a physical presence in this state, must elect to either collect and remit retail sales or use tax on all taxable retail sales into this state pursuant to this chapter and chapters 82.12 and 82.32 RCW or comply with RCW 82.13.020.

(ii) Until January 1, 2020, the requirement under (a)(i) of this subsection (1) to collect and remit tax or comply with RCW 82.13.020 does not apply with respect to the retail sale of digital products and digital codes, other than (A) specified digital products and digital games and (B) digital codes used to redeem specified digital products and digital games, by a marketplace seller through a marketplace facilitator or directly resulting from a referral.

(b) For marketplace facilitators, the election provided in (a) of this subsection (1) applies only with respect to:

(i) Retail sales through the marketplace facilitator's marketplace by or on behalf of marketplace sellers who do not have a physical presence in this state; and

(ii) A marketplace facilitator's own retail sales, if the marketplace facilitator does not have a physical presence in this state.

(c)(i) For referrers, the election provided in (a) of this subsection (1) applies only with respect to:

(A) Retail sales directly resulting from a referral of the purchaser to a marketplace seller who does not have a physical presence in this state; and

(B) A referrer's own retail sales, if the referrer does not have a physical presence in this state.

(ii) A referrer may make different elections with respect to retail sales described in (c)(i)(A) and (B) of this subsection.

(d) An election under (a) of this subsection (1) to collect retail sales or use tax is binding on the remote seller, referrer, or marketplace facilitator until January 1st of the calendar year that is at least twelve consecutive months after the remote seller, referrer, or marketplace facilitator began collecting retail sales or use tax under such election. A remote seller, referrer, or marketplace facilitator who has made an election under this subsection to collect retail sales or use tax may change its election and comply with RCW 82.13.020 by providing written notice to the department in a form and manner required by the department. Such an election change may take effect only on the first day of the calendar year that is at least thirty days following the date that the department received written notice from the remote seller, referrer, or marketplace facilitator of its change in election.

(e)(i) Remote sellers, referrers, and marketplace facilitators complying with RCW 82.13.020 may change their election under this subsection (1) at any time by collecting and remitting retail sales or use taxes under this chapter or chapter 82.12 RCW on taxable retail sales sourced to this state. Such an election is binding as provided in (d) of this subsection (1).

(ii) Remote sellers, referrers, and marketplace facilitators electing for the first time to collect retail sales or use tax must begin collecting state and local retail sales or use taxes on taxable retail sales sourced to this state beginning on the first day of the calendar month that is at least thirty days from the date that the remote seller, referrer, or marketplace facilitator met either threshold described in subsection (2) of this section.

(f) If the department discovers that any remote seller, referrer, or marketplace facilitator required to make an election under this subsection (1) is not registered with the department and collecting retail sales or use tax, the remote seller, referrer, or marketplace facilitator is conclusively presumed to have elected to comply with the notice and reporting requirements of RCW 82.13.020.

(2)(a) A remote seller is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, its gross receipts from retail sales sourced to this state under RCW 82.32.730 are at least ten thousand dollars.

(b) A marketplace facilitator is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross receipts from retail sales sourced to this state under RCW 82.32.730 by the marketplace facilitator, whether in its own name or as an agent of a marketplace seller, total at least ten thousand dollars.

(c) A referrer is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross income of the business received from the referrer's referral services apportioned to Washington under RCW 82.04.462, whether or not subject to tax under chapter 82.04 RCW, and from retail sales sourced to this state under RCW 82.32.730, if any, is at least two hundred sixty-seven thousand dollars.

(3) This section is subject to the provisions of RCW 82.32.733.

(4) Thirty-one percent of the total revenues collected under this section must be deposited into the Washington community development authority account created by section 7 of this act. Such funds may be used only for the purposes enumerated in chapter 43.--- RCW (the new chapter created in section 10 of this act).

(5) For the purposes of this section, "marketplace facilitator," "referral," "referrer," and "remote seller" have the same meaning as provided in RCW 82.13.010.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

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