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**SUBSTITUTE SENATE BILL 5208**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Agriculture, Water, Trade & Economic Development (originally sponsored by Senators Warnick, Takko, Dansel, Brown, Hawkins, Schoesler, Mullet, and Saldaña)

AN ACT Relating to creating the Washington rural jobs act; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW; and providing a contingent expiration date.

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

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 11, chapter . . ., Laws of 2017 (sections 7 and 11 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences.

(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 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, insurance premium taxes under chapter 48.14 RCW, and any retaliatory taxes under chapter 48.14 RCW owed by Washington taxpayers, in order to induce such taxpayers to invest in rural growth funds whose management teams:

(a) Have experience investing in companies located in rural 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 growth funds;

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

(C) Enabling the creation or retention of jobs in rural 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 growth funds, pro rata based upon the amount of investment authority awarded to each rural growth fund pursuant to each application, in the six years following enactment of these tax preferences, then the legislature intends to continue the tax preferences created in sections 7 and 11, chapter . . ., Laws of 2017 (sections 7 and 11 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 survey that a taxpayer claiming the tax credit in section 11 of this act must file with the department of revenue under RCW 82.32.585; and

(b) The annual reports required under section 9 of this act.

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be known and cited as the Washington rural jobs 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) "Closing date" means the date on which a rural growth fund has collected all of the amounts specified by section 4 of this act.

(3) "Credit-eligible capital contribution" means an investment of cash by a person subject to (a) business and occupation taxes under chapter 82.04 RCW, (b) insurance premium taxes under chapter 48.14 RCW, or (c) retaliatory taxes under chapter 48.14 RCW in a rural growth fund that equals the amount specified on a tax credit certificate issued by the department under section 4 of this act. The investment must purchase an equity interest in the rural growth fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five years from the closing date.

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

(5) "Investment authority" means the amount stated on the written approval issued under section 4(5) of this act certifying the rural growth fund. At least sixty percent of a rural growth fund's investment authority must be comprised of credit-eligible capital contributions.

(6) "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.

(7) "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 using the proceeds of a rural growth investment to establish its principal business operations in a rural 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 rural growth investment, unless the department agrees to a later date.

(8) "Rural area" means either of the following:

(a) All areas outside of places identified by the United States census bureau as having more than fifty thousand people; or

(b) Any area determined to be "rural in character" by the undersecretary of agriculture for rural development within the United States department of agriculture.

(9) "Rural business concern" means a business that, at the time of the initial investment in the company by a rural growth fund:

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

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

(c) Is engaged in industries related to manufacturing, plant sciences, services, or technology or, if not engaged in such industries, the department makes a determination that the investment will be highly beneficial to the economic growth of the state.

(10) "Rural growth fund" means an entity certified by the department under section 4 of this act.

(11) "Rural growth investment" means any capital or equity investment in a rural business concern or any loan to a rural business concern with a stated maturity at least one year after the date of issuance.

NEW SECTION. **Sec.**  TAX CREDIT APPLICATION, APPROVAL, AND ALLOCATIONS. (1) Beginning November 1, 2017, the department must accept applications for approval as a rural growth 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, 2017, or as a small business investment company under Title 15 U.S.C. Sec. 681, as amended, as of January 1, 2017;

(c) Evidence that, as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least one hundred million dollars in nonpublic companies located in nonmetropolitan counties as defined by the office of management and budget on the basis of counties or county-equivalent units;

(d) An estimate of the number of jobs that will be created or retained in this state as a result of the applicant's rural growth investments and the assumptions used to determine the estimate;

(e) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed rural 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;

(f) A signed affidavit from each investor stating the amount of credit-eligible capital contributions each taxpayer commits to make and against which of the three tax types the investor plans to apply the credit: (i) Business and occupation taxes under chapter 82.04 RCW; (ii) insurance premium taxes under chapter 48.14 RCW; or (iii) retaliatory taxes under chapter 48.14 RCW; and

(g) 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. 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.

(3) 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)(e) of this section does not demonstrate that the applicant's business plan will result in a positive economic impact on the state 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 11 of this act if the application were approved;

(d) The credit-eligible capital contributions described in affidavits submitted under subsection (1)(f) 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 subsection (2) of this section.

(4) 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 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.

(5) The department may not deny a rural growth fund application or reduce the requested investment authority for reasons other than those described in subsections (2) and (3) of this section. Upon approval of an application, the department must provide a written approval to the applicant as a rural growth fund specifying the amount of the applicant's investment authority.

(6) After receiving the approval issued under subsection (5) of this section, a rural growth fund must:

(a) Within sixty days:

(i) Collect the credit-eligible capital contributions from each taxpayer issued a tax credit certificate under subsection (5) of this section; 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 growth fund's investment authority.

(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.

(7) Upon receiving documentation from the rural growth 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 or retaliatory taxes 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 the credit-eligible capital contribution amount, the name of the rural growth fund, the unified business identifier number of the investor (taxpayer), and the closing date of the rural growth fund.

(8) 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 (transferor) and a new tax credit certificate to the affiliate (transferee). 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.

(9) If the rural growth fund fails to fully comply with subsection (6) of this section, the rural growth 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 (2) of this section. The department must first award lapsed investment authority pro rata to each rural growth fund that was awarded less than the requested investment authority under subsection (2) of this section, which a rural growth fund may allocate to its investors in its discretion. Any remaining investment authority may be awarded by the department to new applicants.

(10) Application fees submitted to the department under subsection (1)(g) of this section must be deposited in the rural job creation account created in section 5 of this act.

NEW SECTION. **Sec.**  RURAL JOB CREATION ACCOUNT. The rural job creation account is created in the state treasury. All receipts from application fees submitted to the department under section 4 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.**  RURAL GROWTH FUND TAX CREDITS ESTABLISHED. (1) A tax credit is authorized against tax otherwise due under chapter 48.14 RCW for persons that made a credit-eligible capital contribution to a rural growth fund and were issued a tax credit certificate under section 4 of this act.

(2) A taxpayer earns a credit on the closing date noted on the taxpayer's tax credit certificate issued under section 4 of this act. The credit is equal to the amount of the taxpayer's credit-eligible capital contribution to the rural growth 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 third through fifth 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 act. 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 4 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 and retaliatory taxes 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 7 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 as provided in this chapter; 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 section 3 of this act apply to this section.

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

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

(b) The rural growth fund, after satisfying (a) of this subsection, fails to maintain rural 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 growth fund reinvests an amount equal to the capital returned or recovered by the fund from the original investment, exclusive of any profits realized, in other rural growth investments in this state within twelve months of the receipt of such capital. Amounts received periodically by a rural growth fund must be treated as continually invested in rural growth investments if the amounts are reinvested in one or more rural growth investments by the end of the following calendar year. A rural growth fund is not required to reinvest capital returned from rural growth investments after the fifth anniversary of the closing date, and such rural growth investments must be considered held continuously by the rural growth fund through the sixth anniversary of the closing date;

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

(d) The rural growth fund invests more than the greater of five million dollars or twenty percent of its investment authority in the same rural business concern, including amounts invested in affiliates of the rural business concern; or

(e) The rural growth fund makes a rural growth investment in a rural business concern 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 growth fund, an affiliate of the rural growth fund, or an investor in the rural growth fund. This subsection does not apply to investments in publicly traded securities by a rural business concern or an owner or affiliate of such concern. For purposes of this subsection, a rural growth fund will not be considered an affiliate of a rural business concern solely as a result of its rural growth investment.

(2) Before revoking one or more tax credit certificates under this subsection, the department must notify the rural growth fund of the reasons for the pending revocation. The rural growth 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 4(2) of this act. The department must first award reverted authority pro rata to each rural growth fund that was awarded less than the requested investment authority under section 4(5) 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 growth 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 growth 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 growth 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 or the department of revenue when a rural growth fund exits the program.

(5) The department may not revoke a tax credit certificate after a rural growth fund exits the program.

(6)(a) The state must share in all distributions and payments to equity holders in the rural growth fund in excess of the sum of the amount of equity capital invested in the fund by such equity holder and an amount equal to any projected increase in the equity holder's federal or state tax liability, including penalties and interest, related to the equity holder's ownership, management, or operation of the fund in the following amounts:

(i) If the number of jobs created or retained as a result of the rural growth fund's rural growth investments is less than sixty percent of the amount filed as part of the rural growth fund's application, sixty percent; and

(ii) If the number of jobs created or retained as a result of the rural growth fund's rural growth investments is less than eighty percent but more than sixty percent of the amount filed as part of the rural growth fund's application, thirty percent.

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

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

NEW SECTION. **Sec.**  REPORTING OBLIGATIONS. (1) Each rural growth fund must submit a report to the department on or before the fifth business day after the second anniversary of the closing date and thereafter within forty-five days of the end of the calendar year including any year that the rural growth fund has not exited the program in accordance with section 7(4) of this act. The report must provide documentation as to the rural growth fund's rural growth investments and include:

(a) A bank statement evidencing each rural growth investment;

(b) The name, location of principal business operations, and industry NAICS code of each business receiving a rural growth investment, including either the determination letter set forth in section 8 of this act or evidence that the business qualified as a rural business concern at the time the investment was made;

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

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

(e) 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.

NEW SECTION. **Sec.**  RULE-MAKING AUTHORITY. The department may adopt rules as 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 growth fund and were issued a tax credit certificate under section 4 of this act.

(2) A taxpayer earns a credit on the closing date noted on the taxpayer's tax credit certificate issued under section 4 of this act. The credit is equal to the amount of the taxpayer's credit-eligible capital contribution to the rural growth 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 third through fifth 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 act. 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 4 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 7 of this act. Upon such notice, the department 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 survey with the department under RCW 82.32.585.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  (1) This act expires July 1, 2023, unless the joint legislative audit and review committee finds under section 1 of this act that the aggregate number of jobs created or retained, as a result of the new tax preferences established in sections 7 and 11, chapter . . ., Laws of 2017 (sections 7 and 11 of this act), matches or exceeds the aggregate number of jobs set forth in the business plans of approved rural growth funds, pro rata based upon the amount of investment authority awarded to each rural growth fund pursuant to each application, in the six years following enactment of the tax preferences in sections 7 and 11, chapter . . ., Laws of 2017 (sections 7 and 11 of this act).

(2) The joint legislative audit and review committee must provide notice of the expiration date of this section to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

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