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SENATE BILL 6085

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State of Washington

61st Legislature

2009 Regular Session

By Senators Kastama, Zarelli, and Shin

Read first time 02/23/09. Referred to Committee on Economic Development, Trade & Innovation.

1 AN ACT Relating to small business loans; adding a new section to  
2 chapter 42.56 RCW; adding a new chapter to Title 43 RCW; and creating  
3 new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 (1) Expansion of small businesses will have a favorable impact on  
7 the Washington economy by creating jobs, increasing competition in the  
8 marketplace, and expanding tax revenues; and

9 (2) There is an unmet need to provide long-term capital to growing  
10 small businesses whose growth exceeds their ability to generate  
11 internal earnings to finance that growth; and

12 (3) Under credit standards used by many financial institutions,  
13 many well-operated small businesses cannot provide security adequate to  
14 qualify for business loans; and

15 (4) This problem is especially severe in its effects on communities  
16 and individuals during economic downturns; and

17 (5) It is desirable to address this problem by creating an  
18 efficient mechanism to encourage financial institutions to make loans  
19 which are not now made; and

1 (6) Assistance and encouragement of small business development to  
2 provide, maintain, and expand employment and tax revenues is an  
3 important function of the state.

4 To assist in small business development, the legislature hereby  
5 creates the Washington small business loan reserve program. The intent  
6 of the legislature in creating the program is to provide sufficient  
7 incentives to financial institutions and credit unions to make small  
8 business loans that would otherwise not be made to worthy small  
9 businesses. Further, it is the intent of the legislature to provide  
10 incentives which will result in greater availability of small business  
11 financing to promote the creation of new employment opportunities and  
12 the retention of existing employment in the state.

13 NEW SECTION. **Sec. 2.** As used in this chapter, the following  
14 definitions apply:

15 (1) "Lender participant" means such financial institutions and  
16 credit unions as are approved by the director to make loans under this  
17 chapter.

18 (2) "Eligible loan" means a loan to a person under the conditions  
19 set forth in this chapter.

20 (3) "Amount of loss" means an amount equal to the unpaid balance of  
21 the principal amount, less any amounts realized by perfecting rights  
22 under a security agreement, together with such interest as the  
23 executive director shall allow, to a maximum of such interest as may be  
24 allowed by rule. The amount of loss is subject to the limitations  
25 contained in section 11(2)(c) of this act.

26 (4) "Premium charge" means the amount, as negotiated under section  
27 9 of this act, which shall be deposited in the small business loan  
28 reserve fund by the lender and the borrower for loans made pursuant to  
29 this chapter.

30 (5) "Executive director" means the executive director of the small  
31 business loan reserve program.

32 (6) "Fund" means the small business loan reserve fund.

33 (7) "Public match" means the amount, equal to the premium charge,  
34 which shall be deposited in the small business loan reserve fund by the  
35 state for loans made pursuant to this chapter.

36 (8) "Manufacturing" means all activities of a commercial or  
37 industrial nature wherein labor or skill is applied, by hand or

1 machinery, to materials so that as a result thereof a new, different,  
2 or useful substance or article of tangible personal property is  
3 produced for sale or commercial or industrial use and shall include the  
4 production or fabrication of specially made or custom made articles.  
5 "Manufacturing" also includes computer programming, the production of  
6 computer software, and other computer-related services, and the  
7 activities performed by research and development laboratories and  
8 commercial testing laboratories.

9 (9) "Traded services" means those commercial and professional  
10 services that are developed for sale outside the state.

11 (10) "Director" means the director of financial institutions.

12 NEW SECTION. **Sec. 3.** In addition to the powers and duties  
13 prescribed under this chapter, the director may exercise all the powers  
14 necessary or convenient for the enforcement of this chapter. The  
15 director may adopt such rules as he or she finds necessary or  
16 appropriate in carrying out this chapter after consultation with  
17 representatives of small businesses and lender participants. The  
18 director may examine the loans made under this chapter by any lender  
19 participant to ascertain compliance with this chapter and any rules  
20 adopted under this chapter, and to ascertain whether a lender  
21 participant is exercising reasonable care and diligence in the making  
22 and collection of loans made under this chapter.

23 An exempt position is hereby created for the executive director.  
24 The executive director shall be appointed by the director and shall  
25 serve at the director's pleasure. The director shall delegate to the  
26 executive director such duties as the director deems necessary to the  
27 administration of the program. The director may employ such other  
28 employees as may be needed to carry out the powers and duties imposed  
29 under this chapter.

30 The director shall report to the governor and appropriate fiscal  
31 and policy committees of the house of representatives and the senate by  
32 December 1st of each year and shall include in the report the  
33 following:

34 (1) The names of all lender participants participating in the small  
35 business loan reserve program;

36 (2) The names and locations by county of all borrowers under the  
37 program;

- 1 (3) The number of employees by county of all borrowers under the  
2 program;
- 3 (4) The total amount of funds lent under the program by county;
- 4 (5) The total amount of funds lent under the program reported  
5 separately by categories of uses made by borrowers of the proceeds;
- 6 (6) The amount paid out of the fund for loans in default, by  
7 lender, and by county;
- 8 (7) The financial condition of the fund;
- 9 (8) An evaluation of the extent to which the results of the program  
10 meet the objectives of the program as defined in section 1 of this act.  
11 This evaluation shall include a review of success in meeting criteria  
12 listed in section 7(4) of this act;
- 13 (9) The expenditure of funds under section 6 of this act; and
- 14 (10) Such other information as in the director's judgment may be  
15 desirable.

16 NEW SECTION. **Sec. 4.** (1) The executive director shall be  
17 responsible for promoting the small business loan reserve program in  
18 conjunction with the small business development center, the office of  
19 minority and women's business enterprises, and associate development  
20 organizations.

21 (2) The executive director shall be responsible for soliciting  
22 gifts, grants, donations, and other funds from private, federal, state,  
23 and local sources for deposit into the small business loan reserve  
24 fund.

25 NEW SECTION. **Sec. 5.** (1) The small business loan reserve fund is  
26 established in the custody of the state treasurer. The fund shall  
27 consist of appropriations made to the fund and any other public or  
28 private money received under this chapter. Moneys in the fund may be  
29 used only to operate the small business loan reserve program and secure  
30 loans made under this chapter. Disbursements from the fund shall be on  
31 authorization of the director. The fund is subject to the allotment  
32 procedure provided under chapter 43.88 RCW, but no appropriation is  
33 required for disbursements.

34 (2)(a) The state of Washington shall not be subject to or  
35 responsible for any claim, debt, obligation, or liability exceeding its

1 appropriations to the small business loan reserve fund and shall be  
2 immune from suit for any claim, debt, obligation, or liability in  
3 excess of such appropriations.

4 (b) All loans made under this chapter shall indicate on the face of  
5 the loan instrument the limit of the state's obligation as set forth in  
6 (a) of this subsection and section 11(2)(c) of this act.

7 (3) Funds held in the small business loan reserve fund which are  
8 attributable to the lender participant's portion of the premium charge  
9 shall be accounted for on a lender-by-lender basis and shall include  
10 the matching premium charge paid by the borrowers and the public match  
11 paid by the state.

12 (4) Upon authorization by the director, disbursements from the  
13 small business loan reserve fund shall be made to financial  
14 institutions by the state treasurer in warrants drawn pursuant to this  
15 chapter.

16 (5) Funds in the small business loan reserve fund shall be invested  
17 in time certificates of deposit with lender participants at such rates  
18 as determined by the director in proportion to each lender  
19 participant's participation in the small business loan reserve program.  
20 Such funds shall be offered on a right of first refusal to lender  
21 participants. Should a lender participant refuse to receive such funds  
22 for investment, the funds shall then be offered other lender  
23 participants in proportion to their participation in the small business  
24 loan reserve program and, if not fully invested in the participating  
25 bank, shall be invested as determined by rule of the director.

26 NEW SECTION. **Sec. 6.** (1) All income from funds invested pursuant  
27 to section 5 of this act shall be deposited in the small business loan  
28 reserve fund, and shall be used exclusively for the support of the  
29 small business loan reserve program.

30 (2) Whenever the director determines that the income from funds  
31 invested pursuant to section 5 of this act exceeds amounts necessary to  
32 support the small business loan reserve program pursuant to subsection  
33 (1) of this section, the director may order any excess funds, not  
34 otherwise obligated per the terms or conditions under which they were  
35 received, transferred into the general fund, but not to exceed the  
36 amount appropriated to the small business loan reserve fund.

1        NEW SECTION.    **Sec. 7.**    (1) The director shall certify those  
2 financial institutions whose experience, financial capability, and such  
3 other criteria as the director may establish under rules adopted under  
4 this chapter qualify them to participate in the small business loan  
5 reserve program.

6        (2) Any financial institution may be disqualified from further  
7 participation in the small business loan reserve program on a finding,  
8 by the director, as specified by rule, that such institution has  
9 violated any provision of this chapter, or any rule adopted under this  
10 chapter, or that such institution is insolvent.

11        (3) A loan made by a lender participant shall be recorded under  
12 this section if made to a corporation, partnership, sole  
13 proprietorship, cooperative, or other association doing business  
14 primarily in Washington, whether nonprofit or organized for profit.

15        (4) The executive director shall adopt by rule eligibility criteria  
16 for loans made under this chapter. Such criteria shall be consistent  
17 with the intent of this chapter to assist small businesses with strong  
18 potential for growth and job creation and, to that end, such loans  
19 shall be primarily devoted to businesses engaging in manufacturing or  
20 traded services. Such criteria shall include but not be limited to:  
21 The potential for benefiting low-income communities; the potential for  
22 benefiting individuals of low and moderate income; the potential for  
23 creating new employment opportunities, especially opportunities for  
24 stable high wage employment; the potential for retaining existing  
25 employment, especially stable high wage employment; the potential for  
26 local economic diversification; the impact on the stabilization,  
27 modernization, and long-term growth potential of mature industries; and  
28 the size and types of businesses which shall be eligible to receive  
29 loans.

30        (5) No more than twenty-five percent of the proceeds of any loans  
31 made under this chapter may be used by the borrowing business for the  
32 payment of existing loans to that business.

33        (6) Upon default by the borrower on any loan made under this  
34 chapter, the executive director may require from the lender a showing  
35 as to how the proceeds of the loan were disbursed.

36        NEW SECTION.    **Sec. 8.**    Prior to the making of a loan under this  
37 chapter, the executive director shall enter into contracts with lender

1 participants and borrowers. In exchange for the state's agreement to  
2 place the public match in the small business loan reserve fund, the  
3 contracts shall obligate the lender participants to adhere to the  
4 provisions of this chapter and to make loans, consistent with  
5 eligibility criteria established pursuant to this chapter, to small  
6 businesses which do not meet standard lender eligibility criteria.

7 NEW SECTION. **Sec. 9.** The lender and borrower shall negotiate the  
8 premium charge for each loan made pursuant to this chapter. Such  
9 charge shall be no more than seven percent of the loan. The lender and  
10 borrower shall contribute an equal amount to the premium charge. The  
11 public match made under this chapter shall be equal in amount to the  
12 premium charge. When a loan is participated in by two or more lender  
13 participants, the premium charge shall be a single rate, applicable to  
14 the entire loan. The lender's portion of the premium charge shall be  
15 apportioned among the lenders in proportion to each lender's  
16 participation in the loan.

17 NEW SECTION. **Sec. 10.** (1)(a) An application to record a loan made  
18 under this chapter shall be made by an eligible lender on such form as  
19 the executive director may require. The application shall set forth  
20 the amount of the loan, its maturity, interest rate, and amortization.  
21 In addition, the executive director may require other information  
22 relating to job creation.

23 (b) If, upon application by a lender participant, the executive  
24 director finds that the lender has made an eligible loan, the executive  
25 director shall cause the loan to be recorded.

26 (2)(a) The lender shall submit, together with the application under  
27 subsection (1) of this section, the following premium charges  
28 determined by the lender under section 9 of this act: (i) The percent  
29 premium charge payable by the lender; and (ii) the percent premium  
30 charge payable by the borrower.

31 (b) Premium charges collected under this section shall be deposited  
32 in the small business loan reserve fund and attributed to the lender  
33 submitting them.

34 (c) Upon recording a loan, the executive director shall attribute  
35 to the lender the public match.

1 (3) All loans made under this chapter shall be recorded in a  
2 register to be maintained by the director. The registration shall set  
3 forth the information contained in the application.

4 (4) At least annually, and more frequently at the direction of the  
5 director, a summary of the information contained in the register  
6 maintained pursuant to subsection (3) of this section shall be provided  
7 to each lender participant.

8 NEW SECTION. **Sec. 11.** (1) Upon default by the borrower on any  
9 loan made under this chapter, the lender, if a secured party, shall  
10 take reasonable steps, and avail itself of such rights and reasonable  
11 remedies as may be provided for in the security agreement and by virtue  
12 of chapter 62A.9A RCW except when, in the determination of the  
13 director, special circumstances exist that do not warrant taking such  
14 action.

15 (2)(a) Upon default by the borrower on any loan made under this  
16 chapter, the lender shall promptly notify the director and the  
17 executive director. The executive director shall, if requested, either  
18 ninety days after the lender has commenced collection action required  
19 by subsection (1) of this section, or after further collection efforts  
20 required by the director, pay to the lender the amount of the loss,  
21 subject to the limitation contained in (c) of this subsection,  
22 sustained by the lender.

23 (b) In addition to the amount of loss, the lender may claim such  
24 amounts as the director has established by rule for collection expenses  
25 incurred in the attempted collection of the loan. Such collection  
26 expense shall be a charge against that portion of the small business  
27 loan reserve fund attributable to the lender who made the loan, and  
28 shall be subject to the limitation contained in (c) of this subsection.

29 (c) Payments made to a lender pursuant to this section shall not  
30 exceed the amount retained in the small business loan reserve fund  
31 attributable to the lender who made the loan.

32 (3) Upon payment of a claim for loss pursuant to this section, the  
33 lender shall assign the note, all security interests, and any and all  
34 other rights held by the lender to the state of Washington. The  
35 director is authorized to take such steps as the director determines  
36 are reasonable to collect, contract, and pay for collection services,



1 and compromise and settle claims. All amounts collected, minus any  
2 unrecovered collection fees, shall be returned to the fund for the  
3 account of the lender participant.

4 (4) Nothing in this section may be construed to excuse the lender  
5 from exercising reasonable care and diligence in the making and  
6 collection of loans under this chapter.

7 If the director, after reasonable notice and opportunity for  
8 hearing to an eligible lender, finds that it has substantially failed  
9 to exercise such care and diligence required under this section, the  
10 director shall disqualify that lender for further loans under this  
11 chapter until the director is satisfied that its failure has ceased and  
12 finds that there is reasonable assurance that the lender will in the  
13 future exercise necessary care and diligence.

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 42.56 RCW  
15 to read as follows:

16 No application to record a loan or the register of loans under  
17 chapter 43.-- RCW (the new chapter created in section 13 of this act)  
18 may be made available to the public.

19 NEW SECTION. **Sec. 13.** Sections 1 through 11 of this act  
20 constitute a new chapter in Title 43 RCW.

21 NEW SECTION. **Sec. 14.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 15.** If any part of this act is found to be in  
26 conflict with federal requirements that are a prescribed condition to  
27 the allocation of federal funds to the state, the conflicting part of  
28 this act is inoperative solely to the extent of the conflict and with  
29 respect to the agencies directly affected, and this finding does not  
30 affect the operation of the remainder of this act in its application to  
31 the agencies concerned. Rules adopted under this act must meet federal  
32 requirements that are a necessary condition to the receipt of federal  
33 funds by the state.

1        NEW SECTION.   **Sec. 16.**   If funding for the purpose of accomplishing  
2        this act is not provided either through federal or private sources by  
3        June 30, 2011, this act is null and void.   The office of financial  
4        management must provide the code reviser's office with written notice  
5        by June 30, 2011, concerning the status of funds referenced in this  
6        section.

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