

HOUSE BILL REPORT

SB 5071

As Reported By House Committee On:
Local Government

Title: An act relating to correcting unconstitutional provisions regarding the construction, sale, and conditions of revenue bonds for pollution control facilities.

Brief Description: Correcting unconstitutional provisions regarding the construction, sale, and conditions of revenue bonds for pollution control facilities.

Sponsors: Senator Haugen; by request of Law Revision Commission.

Brief History:

Reported by House Committee on:
Local Government, February 25, 1994, DP.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 7 members:
Representatives H. Myers, Chair; Springer, Vice Chair;
Dunshee; R. Fisher; Moak; Rayburn and Zellinsky.

Minority Report: Do not pass. Signed by 4 members:
Representatives Edmondson, Ranking Minority Member; Reams,
Assistant Ranking Minority Member; Horn and Van Luven.

Staff: Steve Lundin (786-7127).

Background:

A. Lending of credit.

Article VIII, Section 6, of the state constitution, prohibits any local government from lending its credit or making loans or gifts to any entity or person, except for the necessary support of the poor and infirm. It appears that the interpretation of this provision by the supreme court is in somewhat of a state of flux.

B. Municipal bonds financing government-owned pollution control facilities that are leased to private entities.

Legislation was enacted in 1973 authorizing port districts and other local governments to issue revenue bonds to

finance pollution control facilities that are publicly owned but leased to private entities with an option to purchase the facilities. The private entity pledges to pay all of the costs of the local government in issuing, selling, and retiring the revenue bonds.

The Supreme Court held in 1975 that these bonds and leasing arrangements violated the lending of credit provision of the state constitution.

C. Constitutional amendment.

Amendment 73 to the state constitution was approved by state votes in 1981 allowing the Legislature to enact legislation permitting the issuance of nonrecourse revenue bonds and essentially loan the bond proceeds to finance privately owned industrial development projects. The enabling legislation defines industrial development projects to include pollution abatement projects.

D. More recent developments.

The Supreme Court in more recent decisions in 1983 and 1985 held that certain kinds of nonrecourse revenue bonds, if properly structured, to loan money to private higher education institutions and to finance private housing do not violate the lending of credit provisions. The bonds had to be structured in such a manner so that the government had no financial obligation and the bonds were payable entirely from non-public moneys. These decisions essentially authorized the type of bonds to be issued that were thought, at the time the 1981 constitutional amendment was approved, to be only permissible if authorized by a constitutional amendment.

Summary of Bill: This legislation attempts to legalize the pollution control revenue bonds that were held to be in violation of the Lending of Credit provision.

Municipally owned pollution control facilities that are leased to private entities must have a separate value to the municipality beyond its potential use to the private entity that leases the facilities.

The term of the lease must be less than the term of the municipalities ownership of the facilities by at least one month, i.e., the private entity may not purchase the facilities until at least one month after the term of its lease with the municipality.

The rentals that are charged by the municipality must be more than sufficient, instead of just sufficient, to cover

all the municipality's costs, including debt servicing, reserves, and maintenance where applicable.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a proposal from the Law Revision Commission attempting to make these statutes constitutional.

Testimony Against: None.

Witnesses: Marjorie Rambauer, Washington Law Revision Commission.