
SENATE BILL 5857

State of Washington 56th Legislature 1999 Regular Session

By Senators Goings and Horn

Read first time 02/12/1999. Referred to Committee on Transportation.

1 AN ACT Relating to alternative financing mechanisms for regional
2 transit authorities; adding new sections to chapter 81.112 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that additional funds
6 or other benefits can be made available to Washington regional transit
7 authorities by facilitating their entry into sale and leaseback,
8 leaseout and leaseback, and similar transactions that provide to
9 private parties, in consideration for the funds or other benefits
10 obtained by the regional transit authorities, tax benefits that are not
11 otherwise available to regional transit authorities. The legislature
12 further finds that such transactions have been encouraged by agencies
13 of the federal government as ways to provide additional funds for
14 public facilities. To facilitate such transactions for regional
15 transit authorities, the legislature has determined that while regional
16 transit authorities may currently have the necessary statutory
17 authority and may currently enjoy exemptions from Washington state
18 taxes for such transactions, a clear statement of statutory authority
19 and exemption from Washington state taxes is necessary and helpful for

1 the parties to such transactions. In recognition of the complexity of
2 such transactions, the legislature desires that the authority and
3 exemptions provided by this act be subject to certain limitations and
4 be granted for a period as specified in section 7 of this act.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 81.112 RCW
6 to read as follows:

7 (1) In order to enable regional transit authorities to acquire or
8 finance equipment or facilities, or reduce the cost of equipment or
9 facilities or to provide additional funding to regional transit
10 authorities for any other lawful public purpose, regional transit
11 authorities may enter into sale and leaseback, leaseout and leaseback,
12 and other similar transactions with respect to equipment, facilities,
13 and other real and personal property. In connection with any such
14 transaction, a regional transit authority may execute, as it considers
15 appropriate and consistent with this act, contracts, agreements, notes,
16 security agreements, conveyances, bills of sale, deeds, leases as
17 lessee or lessor, and currency hedges, defeasance arrangements,
18 interest rate, currency or other swap transactions, one or more payment
19 undertaking agreements, and agreements relating to foreign and domestic
20 currency. These agreements or instruments shall have terms,
21 maturities, durations, provisions as to governing laws, grants of
22 security interests, and other provisions that are approved by the board
23 of the regional transit authority and which are consistent with this
24 act.

25 (2) "Payment undertaking agreement" means one or more agreements,
26 undertakings or arrangements pursuant to which all or a portion of the
27 funds generated by a sale and leaseback, leaseout and leaseback, or
28 other similar transaction are directed or paid over to a financial
29 institution, insurance company or other entity which agrees to meet or
30 fulfill, in consideration for such funds, some or all of the
31 obligations of the regional transit authority, or any public
32 corporation or other entity created under section 5 of this act, to
33 make future rent, debt service, or purchase price installment payments
34 in connection with such transaction.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 81.112 RCW
36 to read as follows:

1 Transactions undertaken under section 2 of this act shall be
2 subject to the following conditions:

3 (1) The financial institution, insurance company, or other entity
4 which enters into a payment undertaking agreement with the regional
5 transit authority or public development corporation or entity created
6 pursuant to section 5 of this act as a counterparty must have a rating
7 from at least two nationally recognized credit rating agencies, as of
8 the date of execution of the payment undertaking agreement, that is
9 within the two highest long-term investment grade rating categories,
10 without regard to subcategories, or the obligations of such
11 counterparty must be guaranteed by a financial institution, insurance
12 company, or other entity with such credit rating. The payment
13 undertaking agreement shall require that the obligations of the
14 counterparty or the guarantor, as the case may be, shall be
15 collateralized by collateral of a type and in an amount specified by
16 the governing body of the regional transit authority in the event that
17 the credit ratings of the counterparty or its guarantor fall below the
18 level required by the foregoing provisions.

19 (2) The amount to be paid by the counterparties under payment
20 undertaking agreements for a transaction pursuant to the terms of such
21 agreements, when combined with the amount of securities, deposits, and
22 investments set aside by the regional transit authority for payment in
23 respect of such transactions, together with interest or other earnings
24 on such securities, deposits, or investments, shall be sufficient to
25 pay when due all amounts required to be paid by the regional transit
26 authority, or public corporation or entity created pursuant to section
27 5 of this act, as rent, debt service, or installments of purchase
28 price, as the case may be, over the full term of the transaction plus
29 any optional purchase price due under the transaction. A certification
30 by an independent financial expert, banker, or certified public
31 accountant, who is not an employee of the regional transit authority or
32 public corporation or entity created pursuant to section 5 of this act,
33 certifying compliance with this requirement constitutes conclusive
34 evidence that such arrangements, by their terms, comply with the
35 requirement under this subsection on the sufficiency of the amount.

36 (3) The payment undertaking agreements, and all other basic and
37 material agreements entered into in connection with such transactions,
38 shall specify that the parties to such agreements consent to the
39 jurisdiction of state courts of Washington for disputes arising out of

1 such agreements and agree not to contest venue before such courts.
2 Regardless of the choice of law specified in the foregoing agreements,
3 such agreements shall acknowledge that the regional transit authority
4 or public development corporation or entity created pursuant to section
5 5 of this act which is a party to such agreements is an entity created
6 under the laws of the state of Washington whose power and authority and
7 limitations and restrictions on such power and authority are governed
8 by the laws of the state of Washington.

9 Payment undertaking agreements that meet the foregoing requirement
10 shall be treated for all relevant purposes as agreements pursuant to
11 which future services are performed for a present payment and shall not
12 be treated as payment agreements within the meaning of chapter 39.96
13 RCW.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 81.112 RCW
15 to read as follows:

16 Property sold, acquired, leased, or otherwise transferred under any
17 of the arrangements described in this act shall be considered for all
18 purposes, including, without limitation, leasehold excise tax purposes,
19 to be property owned, possessed, used, and held by the regional transit
20 authority and used for public purposes, whether owned or held by the
21 regional transit authority or by a public corporation or entity
22 contemplated by section 5 of this act.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 81.112 RCW
24 to read as follows:

25 To accomplish any of the activities under this act, a regional
26 transit authority may create a public corporation under RCW 35.21.730
27 through 35.21.755 or other entity created under Washington law, which
28 corporation or entity shall have the authority to undertake any of the
29 activities that regional transit authorities may undertake, including
30 any activities under this act. A regional transit authority shall have
31 all of the powers, authorities, and rights expressly or impliedly
32 granted to any city, town, or county, or their agents, under any
33 provision of RCW 35.21.730 through 35.21.755.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 81.112 RCW
35 to read as follows:

1 A sale, lease, sublease, or other transfer of property by or to the
2 regional transit authority or any public corporation or entity created
3 pursuant to section 5 of this act, and any payments or other
4 consideration paid or received therefrom, in each case in connection
5 with transactions undertaken under section 2 of this act, are exempt
6 from all real estate excise, leasehold excise, sales, use, business and
7 occupation, public utility, motor vehicle, and ad valorem real or
8 personal property taxes, public corporation in lieu excise taxes as
9 provided under RCW 35.21.730 and 35.21.755, and any other taxes imposed
10 by this state or a political subdivision or municipality, city, town,
11 county, authority, political or public corporation, or other agency of
12 this state. The foregoing exemption is not intended to apply to taxes,
13 if any, payable upon first acquisition or use by the regional transit
14 authority, or any public corporation or entity created pursuant to
15 section 5 of this act, of the equipment or facilities that is the
16 subject of a transaction undertaken under section 2 of this act,
17 provided, however, that other applicable exemptions may be available.

18 NEW SECTION. **Sec. 7.** A new section is added to chapter 81.112 RCW
19 to read as follows:

20 (1) Except as provided in subsection (3) of this section, no
21 regional transit authority may initiate a transaction authorized by
22 this act after June 30, 2006.

23 (2) The termination of authority to enter into such transactions
24 after June 30, 2006, shall not affect the validity of any transactions
25 entered into under this act on or before that date or the exemptions
26 from taxes provided by this act for such transactions.

27 (3) A regional transit authority may enter into a transaction in
28 accordance with this act after June 30, 2006, to replace or refinance
29 a transaction that relates to specific obligations entered into on or
30 before that date and that has terminated, or is, pursuant to the terms
31 of the replacement or refinance, to terminate, before the final stated
32 term of that transaction. The exemptions from taxes provided by this
33 act shall apply to such replacement or refinance transactions.

34 (4) Any regional transit authority, or public corporation or entity
35 created pursuant to section 5 of this act, which undertakes a
36 transaction authorized by this act, shall provide to the state finance
37 committee a copy of all material agreements executed in connection with
38 such transaction within three months of the closing of the transaction.

1 The state finance committee shall make a report to the president of the
2 senate and speaker of the house of representatives on transactions
3 authorized by this act. The report shall include the amount of the
4 transactions, the expected savings resulting from the transactions, the
5 transaction costs, and any other information the state finance
6 committee determines relevant. The report shall be submitted within
7 six months of the closing of each transaction.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 81.112 RCW
9 to read as follows:

10 The authority granted by this act shall be in addition and
11 supplemental to any authority previously granted and shall not limit or
12 be limited by any other powers or authority previously granted to
13 regional transit authorities or any public corporation, or restrictions
14 on such powers or authority. Nothing in this act shall be construed as
15 limiting other statutory authority previously granted to such regional
16 transit authorities or public corporations or other tax exemptions
17 granted to such regional transit authorities or public corporations.
18 Nothing in this act shall be construed as limiting the authority of the
19 state, any political subdivision thereof, or any other public or
20 municipal corporation to undertake the activities described herein as
21 expressly or impliedly authorized by other provisions of law. Nothing
22 in this act shall be construed as an authorization to provide
23 indemnification to the extent such indemnification is prohibited or
24 restricted by other provisions of law or the Constitution of the state
25 of Washington.

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