
SUBSTITUTE SENATE BILL 5174

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on International Trade & Economic Development (originally sponsored by Senators Shin, Schmidt, Kohl-Welles, Rasmussen, Kline, Keiser, Roach, Doumit, Regala, Berkey, Pflug, McAuliffe, Franklin and Eide)

READ FIRST TIME 02/04/05.

1 AN ACT Relating to providing a source of funding for customized
2 work force training; amending RCW 43.163.020; adding a new section to
3 chapter 82.32 RCW; and adding a new chapter to Title 28C RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the availability
6 of a trained work force is critical to attracting and retaining
7 businesses. The legislature also finds that the growth of many
8 businesses is limited by an unmet need for training. Furthermore,
9 training not only helps business, it also improves the quality of life
10 for workers and communities. Because of the statewide public benefit
11 to be gained from instituting a customized training program, the
12 legislature intends to create a new program to fund work force training
13 through the sale of bonds. The bonds themselves will be paid by the
14 earmarking of the state business and occupation tax and public utility
15 tax that is imposed on participating employers.

16 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
17 section apply throughout this chapter unless the context clearly
18 requires otherwise.

1 (1) "Authority" means the Washington economic development finance
2 authority created under RCW 43.163.020, or any board, body, commission,
3 department, or officer succeeding to the principal functions of the
4 authority or to whom the powers conferred upon the authority shall be
5 given by law.

6 (2) "Board" means the state board for community and technical
7 colleges.

8 (3) "Bond resolution" means any resolution of the authority,
9 adopted under this chapter, authorizing the issuance and sale of bonds.

10 (4) "Bonds" means bonds, notes, commercial paper, certificates of
11 indebtedness, or other evidences of indebtedness of the authority
12 issued under this chapter.

13 (5) "Costs of training" means the direct payments made under a
14 contract with a qualified training institution for formal technical or
15 skill training, including basic skills. "Costs of training" includes
16 amounts in the contract for costs of instruction, materials, equipment,
17 rental of class space, marketing, and overhead. "Costs of training"
18 does not include employee tuition reimbursements unless the tuition
19 reimbursement is specifically included in a contract.

20 (6) "Participant" means a private employer that, under this
21 chapter, undertakes a training program with a qualified training
22 institution.

23 (7) "Qualified training institution" means a public community or
24 technical college or a private vocational school licensed by either the
25 work force training and education coordinating board or the higher
26 education coordinating board.

27 (8) "Training program" means a program funded under this chapter at
28 a qualified training institution.

29 (9) "Trust indenture" means any agreement, trust indenture, or
30 other similar instrument by and between the authority and one or more
31 corporate trustees.

32 NEW SECTION. **Sec. 3.** (1) The Washington customized employment
33 training program is hereby created to allow employers locating or
34 expanding in the state to receive training assistance to provide
35 training for employees.

36 (2)(a) Application to receive funding under this program shall be
37 made to the board in a form and manner as specified by the board.

1 Successful applicants shall be provided with a training grant to be
2 used to pay for the costs of training. Employers may not receive funds
3 for training costs which exceed the maximum annual training cost per
4 employee, as established by the state board for community and technical
5 colleges, and are not eligible to receive total grants over five
6 hundred thousand dollars per calendar year.

7 (b) Approval shall be granted for applicants who meet the following
8 criteria:

9 (i) The employer must have entered into an agreement with a
10 qualified training institution to engage in customized training and the
11 employer must agree to: (A) Reimburse the institution in an amount
12 equal to one-half of the amount of the training grant; (B) pay the
13 taxes to be deposited into the employment training finance account
14 pursuant to section 11 of this act; and (C) make such other payments as
15 the institution specifies to ensure payments into the employment
16 training finance account sufficient to cover the costs associated with
17 the bonds issued under section 4 of this act. The taxes deposited in
18 the employment training finance account do not constitute payment to
19 the institution.

20 (ii) The employer must either: (A) Be engaged in activities
21 subject to tax under chapter 82.04 or 82.16 RCW and must report, or
22 expect to report, such tax over a ten-year period in an annual amount
23 of at least one-tenth of the amount of the grant, or, if more than one
24 grant is received, at least one-tenth the total of all grants received
25 for which taxes are being deposited into the employment training
26 finance account pursuant to section 11 of this act; or (B) document the
27 availability of a job skills grant under RCW 28C.04.420 or other funds
28 sufficient to pay, either alone or when combined with the payments
29 required under chapter 82.04 or 82.16 RCW, the costs associated with
30 any bond issued under section 4 of this act within ten years of the
31 issuance of the bond.

32 (iii) The employer must ensure that the number of employees an
33 employer has in the state during the calendar year following the
34 completion of the training program will equal the number of employees
35 the employer had in the state in the calendar year preceding the start
36 of the training program plus seventy-five percent of the number of
37 trainees. The agreement with the qualified training institution

1 provided for in (b)(i) of this subsection shall specify terms for
2 additional reimbursement or payment to the employment training finance
3 account by the employer if the criterion of this subsection is not met.

4 (iv) The training grant may not be used to train workers who have
5 been hired as a result of a strike or lockout.

6 (c) Training grants are available on a first-come first-served
7 basis, with priority based on the date and time the application is
8 received by the board.

9 (3) Qualified training institutions may enter into agreements with
10 four-year institutions of higher education as defined in RCW 28B.10.016
11 in accordance with the interlocal cooperation act, chapter 39.34 RCW.

12 (4) The board may adopt rules to implement this section.

13 NEW SECTION. **Sec. 4.** SPECIAL OBLIGATION BONDS--ISSUANCE. (1) The
14 authority shall notify the department of revenue of those employers
15 participating in the program under section 3 of this act.

16 (2) The authority may, from time to time, issue its special
17 obligation bonds in order to carry out the purposes of this chapter and
18 to enable the authority to exercise any of the powers granted to it in
19 this chapter. The bonds may be issued on either a taxable or federally
20 tax-exempt basis. The bonds shall be issued pursuant to a bond
21 resolution or trust indenture and shall be payable solely out of the
22 employment training finance account created in section 11 of this act.
23 The employment training finance account shall be funded in whole or in
24 part from moneys paid by one or more participants for whose benefit
25 such bonds were issued and from any other sources authorized by law,
26 including from the proceeds of bonds issued by the authority for the
27 purpose of refunding any outstanding bonds of the authority.

28 (3) The bonds may be secured by:

29 (a) A first lien against any unexpended proceeds of the bonds;

30 (b) A first lien against moneys in the employment training finance
31 account created in section 11 of this act;

32 (c) A first or subordinate lien against the revenue and receipts of
33 the participant or participants;

34 (d) A first or subordinate security interest against any real or
35 personal property, tangible or intangible, of the participant or
36 participants, including, but not limited to, the training program
37 financed by the authority;

1 (e) Any other real or personal property of the participant or
2 participants, tangible or intangible;

3 (f) Any combination of (a) through (e) of this subsection; or

4 (g) Any other security the authority may deem appropriate or
5 necessary.

6 Any security interest created against the unexpended bond proceeds
7 and against the employment training finance account shall be
8 immediately valid and binding against the moneys and any securities in
9 which the moneys may be invested without authority or trustee
10 possession, and the security interest shall be prior to any party
11 having any competing claim against the moneys or securities, without
12 filing or recording under Article 9A of the Uniform Commercial Code,
13 Title 62A RCW, and regardless of whether the party has notice of the
14 security interest.

15 (4) The bonds may be issued as serial bonds or as term bonds or any
16 such combination. The bonds shall bear such date or dates; mature at
17 such time or times; bear interest at such rate or rates, either fixed
18 or variable; be payable at such time or times; be in such
19 denominations; carry such registration privileges; be made
20 transferable, exchangeable, and interchangeable; be payable in lawful
21 money of the United States of America at such place or places; be
22 subject to such terms of redemption; and be sold at public or private
23 sale, in such manner, at such time, and at such price as the authority
24 shall determine. The bonds shall be executed by the manual or
25 facsimile signatures of the chairperson and the authority's duly
26 elected secretary or its executive director, and by the trustee if the
27 authority determines to use a trustee. At least one signature shall be
28 manually subscribed.

29 (5) Any bond resolution, trust indenture, or agreement with a
30 participant relating to bonds issued by the authority or the financing
31 or refinancing made available by this act may contain provisions, which
32 may be made a part of the contract with the holders or owners of the
33 bonds to be issued, pertaining to the following, among other matters:

34 (a) The security interests granted by the participant to secure
35 repayment of any amounts financed and the performance by the
36 participant of its other obligations in the financing;

37 (b) The security interests granted to the holders or owners of the
38 bonds to secure repayment of the bonds;

1 (c) Rentals, fees, and other amounts to be charged, and the sums to
2 be raised in each year through such charges, and the use, investment,
3 and disposition of the sums;

4 (d) The segregation of reserves or sinking funds, and the
5 regulation, investment, and disposition thereof;

6 (e) Limitations on the uses of the project;

7 (f) Limitations on the purposes to which, or the investments in
8 which, the proceeds of the sale of any issue of bonds may be applied;

9 (g) Terms pertaining to the issuance of additional parity bonds;

10 (h) Terms pertaining to the incurrence of parity debt;

11 (i) The refunding of outstanding bonds;

12 (j) Procedures, if any, by which the terms of any contract with
13 bondholders may be amended or abrogated;

14 (k) Acts or failures to act that constitute a default by the
15 participant or the authority in their respective obligations and the
16 rights and remedies in the event of a default;

17 (l) Terms governing performance by the trustee of its obligation;

18 or

19 (m) Such other additional covenants, agreements, and provisions as
20 are deemed necessary, useful, or convenient by the authority for the
21 security of the holders of the bonds.

22 (6) Bonds may be issued by the authority to refund other
23 outstanding authority bonds, at or before the maturity thereof, and to
24 pay any redemption premium with respect thereto. Bonds issued for such
25 refunding purposes may be combined with bonds issued for the financing
26 or refinancing of new training programs. Pending the application of
27 the proceeds of the refunding bonds to the redemption of the bonds to
28 be redeemed, the authority may enter into an agreement or agreements
29 with a corporate trustee under section 7 of this act with respect to
30 the interim investment of the proceeds and the application of the
31 proceeds and the earnings on the proceeds to the payment of the
32 principal of and interest on, and the redemption of the bonds to be
33 redeemed.

34 (7) All bonds and any interest coupons appertaining to the bonds
35 are negotiable instruments under Title 62A RCW.

36 (8) Neither the members of the authority, nor its employees or
37 agents, nor any person executing the bonds is liable personally on the

1 bonds or subject to any personal liability or accountability by reason
2 of the issuance of the bonds.

3 (9) The authority may purchase its bonds with any of its funds
4 available for the purchase. The authority may hold, pledge, cancel, or
5 resell the bonds subject to and in accordance with agreements with
6 bondholders.

7 NEW SECTION. **Sec. 5.** SPECIAL OBLIGATION BONDS--PAYMENT--
8 SEGREGATION OF PROCEEDS AND MONEYS. Bonds issued under this chapter
9 shall not be deemed to constitute obligations, either general or
10 special, of the state or of any political subdivision of the state, or
11 a pledge of the faith and credit of the state or of any political
12 subdivision, or a general obligation of the authority. The bonds shall
13 be special obligations of the authority and shall be payable solely
14 from the employment training finance account created in section 11 of
15 this act. Except for any initial appropriations which may be made, the
16 fund or funds shall be funded in whole or in part from moneys paid by
17 one or more participants for whose benefit such bonds were issued and
18 from any other sources authorized by law, including from the proceeds
19 of bonds issued by the authority for the purpose of refunding any
20 outstanding bonds of the authority. The issuance of bonds under this
21 chapter shall not obligate, directly, indirectly, or contingently, the
22 state or any political subdivision of the state to levy any taxes or
23 appropriate or expend any funds for the payment of the principal or the
24 interest on the bonds.

25 Neither the proceeds of bonds issued under this chapter, any moneys
26 used or to be used to pay the principal of or interest on the bonds,
27 nor any moneys received by the authority to defray its administrative
28 costs shall constitute public money or property. All of such moneys
29 shall be kept segregated and set apart from funds of the state and any
30 political subdivision of the state and shall not be subject to
31 appropriation or allotment by the state or subject to the provisions of
32 chapter 43.88 RCW.

33 NEW SECTION. **Sec. 6.** AGREEMENTS WITH PARTICIPANTS--PAYMENT OF
34 COSTS AND EXPENSES. In connection with any bonds issued by the
35 authority, the authority shall enter into agreements with participants
36 which shall provide for the payment by each participant of amounts

1 which shall be sufficient, together with other revenues available to
2 the authority, if any, to: (1) Pay the issuance and administrative
3 fees set by the authority; (2) pay the costs of conducting the training
4 program financed by the authority, to the extent that the payment of
5 the costs has not otherwise been adequately provided for; (3) pay the
6 business and occupation tax and utility tax due, or, if the participant
7 is eligible for an exemption or credit on such tax, pay an amount
8 equivalent to the amount that would be due, but for the exemption or
9 credit, into the employment training finance account to pay the
10 principal of, premium, if any, and interest on outstanding bonds of the
11 authority issued in respect of such program or programs as the same
12 shall become due and payable; and (4) create and maintain reserves
13 required or provided for in any bond resolution or trust indenture
14 authorizing the issuance of such bonds of the authority. The payments
15 shall not be subject to supervision or regulation by any department,
16 committee, board, body, bureau, or agency of the state other than the
17 authority.

18 NEW SECTION. **Sec. 7.** MONEYS DEEMED TRUST FUNDS--AGREEMENT OR
19 TRUST INDENTURE WITH BANK OR TRUST COMPANY. All moneys received by or
20 on behalf of the authority under this chapter, whether as proceeds from
21 the sale of bonds or from participants or from other sources, shall be
22 deemed to be trust funds to be held and applied solely as provided in
23 this chapter. The authority, in lieu of receiving and applying the
24 moneys itself, may enter into an agreement or trust indenture with one
25 or more banks or trust companies having the power and authority to
26 conduct trust business in the state to:

27 (1) Perform all of any part of the obligations of the authority
28 with respect to: (a) Bonds issued by it; (b) the receipt, investment,
29 and application of the proceeds of the bonds and moneys paid by a
30 participant or available from other sources for the payment of the
31 bonds; (c) the enforcement of the obligations of a participant in
32 connection with the financing or refinancing of any project; and (d)
33 other matters relating to the exercise of the authority's powers under
34 this chapter;

35 (2) Receive, hold, preserve, and enforce any security interest or
36 evidence of security interest granted by a participant for purposes of
37 securing the payment of the bonds; and

1 (3) Act on behalf of the authority or the holders or owners of
2 bonds of the authority for purposes of assuring or enforcing the
3 payment of the bonds, when due.

4 NEW SECTION. **Sec. 8.** CHAPTER SUPPLEMENTAL--APPLICATION OF OTHER
5 LAWS. This chapter provides a complete, additional, and alternative
6 method for accomplishing the purposes of this chapter and shall be
7 regarded as supplemental and additional to powers conferred by other
8 laws. The issuance of bonds and refunding bonds under this chapter
9 need not comply with the requirements of any other law applicable to
10 the issuance of bonds.

11 NEW SECTION. **Sec. 9.** CONSTRUCTION. This chapter, being necessary
12 for the welfare of the state and its inhabitants, shall be liberally
13 construed to effect its purposes. Insofar as the provisions of this
14 chapter are inconsistent with the provisions of any general or special
15 law, or parts thereof, the provisions of this chapter shall be
16 controlling.

17 NEW SECTION. **Sec. 10.** CAPTIONS NOT LAW. Captions used in this
18 chapter are not any part of the law.

19 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.32 RCW
20 to read as follows:

21 The business and occupation tax and the public utility taxes not
22 otherwise encumbered by the requirements of RCW 82.16.020(3) received
23 from a person who is an employer participating under section 3 of this
24 act shall be deposited into the employment training finance account,
25 which is hereby created in the custody of the state treasurer. Only
26 the Washington economic development finance authority may authorize
27 expenditures from the account and no appropriation is required for
28 expenditures. The money in the account must be used for the purposes
29 of bond resolution or trust indenture under which the bonds are issued
30 under chapter 28C.-- RCW (sections 1 through 10 of this act). The
31 deposit of revenue under this section from a person shall cease when
32 the authority specifies that the participant has met the monetary
33 obligations of the program.

1 **Sec. 12.** RCW 43.163.020 and 1995 c 399 s 89 are each amended to
2 read as follows:

3 The Washington economic development finance authority is
4 established as a public body corporate and politic, with perpetual
5 corporate succession, constituting an instrumentality of the state of
6 Washington exercising essential governmental functions. The authority
7 is a public body within the meaning of RCW 39.53.010.

8 The authority shall consist of (~~(eighteen [seventeen])~~) seventeen
9 members as follows: The director of the department of community,
10 trade, and economic development, the director of the (~~(department of~~
11 ~~agriculture)~~) state board for community and technical colleges, the
12 state treasurer, one member from each caucus in the house of
13 representatives appointed by the speaker of the house, one member from
14 each caucus in the senate appointed by the president of the senate, and
15 ten public members with one representative of women-owned businesses
16 and one representative of minority-owned businesses and with at least
17 three of the members residing east of the Cascades. The public members
18 shall be residents of the state appointed by the governor on the basis
19 of their interest or expertise in trade, agriculture or business
20 finance or jobs creation and development. One of the public members
21 shall be appointed by the governor as chair of the authority and shall
22 serve as chair of the authority at the pleasure of the governor. The
23 authority may select from its membership such other officers as it
24 deems appropriate.

25 The term of the persons appointed by the governor as public members
26 of the authority, including the public member appointed as chair, shall
27 be four years from the date of appointment, except that the term of
28 three of the initial appointees shall be for two years from the date of
29 appointment and the term of four of the initial appointees shall be for
30 three years from the date of appointment. The governor shall designate
31 the appointees who will serve the two-year and three-year terms.

32 In the event of a vacancy on the authority due to death,
33 resignation or removal of one of the public members, or upon the
34 expiration of the term of one of the public members, the governor shall
35 appoint a successor for the remainder of the unexpired term. If either
36 of the state offices is abolished, the resulting vacancy on the
37 authority shall be filled by the state officer who shall succeed
38 substantially to the power and duties of the abolished office.

1 Any public member of the authority may be removed by the governor
2 for misfeasance, malfeasance or willful neglect of duty after notice
3 and a public hearing, unless such notice and hearing shall be expressly
4 waived in writing by the affected public member.

5 The state officials serving in ex officio capacity may each
6 designate an employee of their respective departments to act on their
7 behalf in all respects with regard to any matter to come before the
8 authority. Such designations shall be made in writing in such manner
9 as is specified by the rules of the authority.

10 The members of the authority shall serve without compensation but
11 shall be entitled to reimbursement, solely from the funds of the
12 authority, for expenses incurred in the discharge of their duties under
13 this chapter. The authority may borrow funds from the department for
14 the purpose of reimbursing members for expenses; however, the authority
15 shall repay the department as soon as practicable.

16 A majority of the authority shall constitute a quorum.

17 NEW SECTION. **Sec. 13.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act
22 constitute a new chapter in Title 28C RCW.

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