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SENATE BILL 6326

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State of Washington

59th Legislature

2006 Regular Session

By Senators Shin, Rasmussen, Pflug, Doumit, Rockefeller, Weinstein, Pridemore, Hewitt, Jacobsen, Thibaudeau, Swecker, Sheldon, Oke, Keiser, Kohl-Welles, Franklin, Kline and Berkey

Read first time 01/11/2006. Referred to Committee on International Trade & Economic Development.

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 82.04 RCW; adding a new section to chapter 43.163 RCW; and  
4 adding a new chapter to Title 28C RCW.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the provision of  
7 customized training is critical to attracting and retaining businesses,  
8 and that the growth of many businesses is limited by an unmet need for  
9 customized training. The legislature also finds that work force  
10 training not only helps business, it also improves the quality of life  
11 for workers and communities. Because of the statewide public benefit  
12 to be gained from instituting a customized training program, the  
13 legislature intends to create a new program to fund work force training  
14 in a manner that reduces the up-front costs of training to new and  
15 expanding firms.

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 from a  
2 qualified training institution to be used to pay for the costs of  
3 training. Employers may not receive funds for training costs which  
4 exceed the maximum annual training cost per employee, as established by  
5 the board, 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) make a  
13 deposit into the account specified in section 12 of this act in an  
14 amount equal to the amount that would be due under chapter 82.04 RCW if  
15 not for the provisions of section 11 of this act; and (C) make such  
16 other payments as the institution or authority specifies to ensure  
17 payments into the account specified in section 12 of this act  
18 sufficient to cover the costs associated with the bonds issued under  
19 section 4 of this act. The deposits in the account specified in  
20 section 12 of this act do not constitute payment to the institution.

21 (ii) The employer must either: (A) Be engaged in activities that  
22 will generate sufficient revenue over a ten-year period to make annual  
23 deposits of at least one-tenth of the amount of the grant, or, if more  
24 than one grant is received, at least one-tenth the total of all grants  
25 received for which payments are being deposited into the account  
26 specified in section 12 of this act; or (B) document the availability  
27 of a job skills grant under RCW 28C.04.420 or other funds sufficient to  
28 pay the costs associated with any bond issued under section 4 of this  
29 act within ten years of the issuance of the bond.

30 (iii) The employer must ensure that the number of employees an  
31 employer has in the state during the calendar year following the  
32 completion of the training program will equal the number of employees  
33 the employer had in the state in the calendar year preceding the start  
34 of the training program plus seventy-five percent of the number of  
35 trainees. The agreement with the qualified training institution  
36 provided for in (b)(i) of this subsection shall specify terms for  
37 additional reimbursement or payment to the account specified in section

1 12 of this act by the employer if the criterion of this subsection is  
2 not met.

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

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

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

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

12 (2) The authority may, from time to time, issue its special  
13 obligation bonds in order to carry out the purposes of this chapter and  
14 to enable the authority to exercise any of the powers granted to it in  
15 this chapter. The bonds may be issued on either a taxable or federally  
16 tax-exempt basis. The bonds shall be issued pursuant to a bond  
17 resolution or trust indenture and shall be payable solely out of the  
18 account specified in section 12 of this act. The account specified in  
19 section 12 of this act shall be funded in whole or in part from moneys  
20 paid by one or more participants for whose benefit such bonds were  
21 issued and from any other sources authorized by law, including from the  
22 proceeds of bonds issued by the authority for the purpose of refunding  
23 any outstanding bonds of the authority.

24 (3) The bonds may be secured by:

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

26 (b) A first lien against moneys in the account specified in section  
27 12 of this act;

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

30 (d) A first or subordinate security interest against any real or  
31 personal property, tangible or intangible, of the participant or  
32 participants;

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

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

36 (g) Any other security the authority may deem appropriate or  
37 necessary.

1 Any security interest created against the unexpended bond proceeds  
2 and against the account specified in section 12 of this act shall be  
3 immediately valid and binding against the moneys and any securities in  
4 which the moneys may be invested without authority or trustee  
5 possession, and the security interest shall be prior to any party  
6 having any competing claim against the moneys or securities, without  
7 filing or recording under Article 9A of the Uniform Commercial Code,  
8 Title 62A RCW, and regardless of whether the party has notice of the  
9 security interest.

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

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

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

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

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

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

- 1 (e) Limitations on the uses of the project;
- 2 (f) Limitations on the purposes to which, or the investments in  
3 which, the proceeds of the sale of any issue of bonds may be applied;
- 4 (g) Terms pertaining to the issuance of additional parity bonds;
- 5 (h) Terms pertaining to the incurrence of parity debt;
- 6 (i) The refunding of outstanding bonds;
- 7 (j) Procedures, if any, by which the terms of any contract with  
8 bondholders may be amended or abrogated;
- 9 (k) Acts or failures to act that constitute a default by the  
10 participant or the authority in their respective obligations and the  
11 rights and remedies in the event of a default;
- 12 (l) Terms governing performance by the trustee of its obligation;  
13 or
- 14 (m) Such other additional covenants, agreements, and provisions as  
15 are deemed necessary, useful, or convenient by the authority for the  
16 security of the holders of the bonds.
- 17 (6) Bonds may be issued by the authority to refund other  
18 outstanding authority bonds, at or before the maturity thereof, and to  
19 pay any redemption premium with respect thereto. Bonds issued for such  
20 refunding purposes may be combined with bonds issued for the financing  
21 or refinancing of new training programs. Pending the application of  
22 the proceeds of the refunding bonds to the redemption of the bonds to  
23 be redeemed, the authority may enter into an agreement or agreements  
24 with a corporate trustee under section 7 of this act with respect to  
25 the interim investment of the proceeds and the application of the  
26 proceeds and the earnings on the proceeds to the payment of the  
27 principal of and interest on, and the redemption of the bonds to be  
28 redeemed.
- 29 (7) All bonds and any interest coupons appertaining to the bonds  
30 are negotiable instruments under Title 62A RCW.
- 31 (8) Neither the members of the authority, nor its employees or  
32 agents, nor any person executing the bonds is liable personally on the  
33 bonds or subject to any personal liability or accountability by reason  
34 of the issuance of the bonds.
- 35 (9) The authority may purchase its bonds with any of its funds  
36 available for the purchase. The authority may hold, pledge, cancel, or  
37 resell the bonds subject to and in accordance with agreements with  
38 bondholders.

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

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

27        NEW SECTION.    **Sec. 6.** AGREEMENTS WITH PARTICIPANTS--PAYMENT OF  
28 COSTS AND EXPENSES. In connection with any bonds issued by the  
29 authority, the authority shall enter into agreements with participants  
30 which shall provide for the payment by each participant of amounts  
31 which shall be sufficient, together with other revenues available to  
32 the authority, if any, to: (1) Pay the issuance and administrative  
33 fees set by the authority; (2) pay the costs of conducting the training  
34 program financed by the authority, to the extent that the payment of  
35 the costs has not otherwise been adequately provided for; (3) pay an  
36 amount equal to the amount that would be due under chapter 82.04 RCW,  
37 if not, for the exemption provided for in section 11 of this act, into

1 the account specified in section 12 of this act to pay the principal  
2 of, premium, if any, and interest on outstanding bonds of the authority  
3 issued in respect of such program or programs as the same shall become  
4 due and payable; and (4) create and maintain reserves required or  
5 provided for in any bond resolution or trust indenture authorizing the  
6 issuance of such bonds of the authority. The payments shall not be  
7 subject to supervision or regulation by any department, committee,  
8 board, body, bureau, or agency of the state other than the authority.

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

18 (1) Perform all of any part of the obligations of the authority  
19 with respect to: (a) Bonds issued by it; (b) the receipt, investment,  
20 and application of the proceeds of the bonds and moneys paid by a  
21 participant or available from other sources for the payment of the  
22 bonds; (c) the enforcement of the obligations of a participant in  
23 connection with the financing or refinancing of any project; and (d)  
24 other matters relating to the exercise of the authority's powers under  
25 this chapter;

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

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

32 NEW SECTION. **Sec. 8.** CHAPTER SUPPLEMENTAL--APPLICATION OF OTHER  
33 LAWS. This chapter provides a complete, additional, and alternative  
34 method for accomplishing the purposes of this chapter and shall be  
35 regarded as supplemental and additional to powers conferred by other



1 laws. The issuance of bonds and refunding bonds under this chapter  
2 need not comply with the requirements of any other law applicable to  
3 the issuance of bonds.

4 NEW SECTION. **Sec. 9.** CONSTRUCTION. This chapter, being necessary  
5 for the welfare of the state and its inhabitants, shall be liberally  
6 construed to effect its purposes. Insofar as the provisions of this  
7 chapter are inconsistent with the provisions of any general or special  
8 law, or parts thereof, the provisions of this chapter shall be  
9 controlling.

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

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.04 RCW  
13 to read as follows:

14 (1) This chapter does not apply to any person that is a participant  
15 in the Washington customized employment training program in chapter  
16 28C.-- RCW (sections 1 through 10 and 12 of this act).

17 (2) "Participant" has the same meaning as provided in section 2 of  
18 this act.

19 NEW SECTION. **Sec. 12.** The payments received from a person who is  
20 an employer participating under section 3 of this act shall be  
21 deposited by the authority into a separate and identifiable account  
22 opened and maintained at a qualified public depository. Only the  
23 authority may authorize expenditures from the account. The money in  
24 the account must be used for the purposes of bond resolution or trust  
25 indenture under which the bonds are issued under this chapter. The  
26 deposit of revenue under this section from a participant shall cease  
27 when the authority specifies that the participant has met the monetary  
28 obligations of the program.

29 **Sec. 13.** RCW 43.163.020 and 1995 c 399 s 89 are each amended to  
30 read as follows:

31 The Washington economic development finance authority is  
32 established as a public body corporate and politic, with perpetual

1 corporate succession, constituting an instrumentality of the state of  
2 Washington exercising essential governmental functions. The authority  
3 is a public body within the meaning of RCW 39.53.010.

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

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

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

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

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

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

12       A majority of the authority shall constitute a quorum.

13       NEW SECTION.   **Sec. 14.** A new section is added to chapter 43.163  
14 RCW to read as follows:

15       The authority is authorized to conduct the Washington customized  
16 employment training program created in chapter 28C.-- RCW (sections 1  
17 through 10 and 12 of this act).

18       NEW SECTION.   **Sec. 15.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22       NEW SECTION.   **Sec. 16.** Sections 1 through 10 and 12 of this act  
23 constitute a new chapter in Title 28C RCW.

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