
SUBSTITUTE SENATE BILL 6327

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on International Trade & Economic Development (originally sponsored by Senators Shin, Swecker, Pflug, Rockefeller, McAuliffe, Doumit, Franklin, Rasmussen, Thibaudeau, Berkey, Keiser, Schoesler, Sheldon and Fairley)

READ FIRST TIME 02/02/06.

1 AN ACT Relating to financing local economic development projects;
2 amending RCW 43.163.010; adding a new section to chapter 82.29A RCW;
3 and adding a new chapter to Title 43 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that, in many
6 areas of the state, the lack of necessary infrastructure and vacant
7 brownfields act as an impediment to economic growth.

8 (2) The legislature further finds that public improvements to
9 brownfields, carried out in accordance with local economic development
10 plans, will encourage investment in job-producing private development
11 and will expand the public tax base.

12 (3) The legislature intends, through this act, to promote and
13 facilitate the orderly development and economic stability of
14 communities in the state. It is the purpose of this chapter to provide
15 financial resources to assist local jurisdictions in the financing of
16 public improvements which are needed to encourage private development
17 where this development would not otherwise occur due to the presence of
18 contaminated property and other environmental considerations.

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

3 (1) "Authority" means the Washington economic development finance
4 authority created in chapter 43.163 RCW.

5 (2) "Brownfield" means abandoned, idled, or underused property,
6 including industrial and commercial facilities, owned by a local
7 jurisdiction, where expansion or redevelopment is complicated by real
8 or perceived contamination.

9 (3) "Cleanup payments" means the payments made by lessees of former
10 brownfield sites as required by section 3 of this act.

11 (4) "Leasehold excise tax" means an excise tax imposed under
12 chapter 82.29A RCW on the act or privilege of occupying or using
13 publicly owned real or personal property.

14 (5) "Local economic development project" means a project that:

15 (a) Promotes economic development and job creation or retention by
16 the private sector; and

17 (b) Includes cleanup of publicly owned brownfield sites, including
18 adjacent marine waters, rivers, and lakes, that have been designated a
19 priority for cleanup in a local economic development plan and by the
20 department of ecology.

21 (6) "Local economic development project costs" means costs
22 associated with:

23 (a) Environmental cleanup, including restoring brownfields and fish
24 habitat;

25 (b) Street and road construction and improvements;

26 (c) Water and sewer system construction and improvements;

27 (d) Land use planning and associated environmental analysis and
28 project design;

29 (e) Relocation, maintenance, and operation of property pending
30 construction of the local economic development project;

31 (f) Complying with the requirements of this act and other
32 applicable law; and

33 (g) Administrative expenditures reasonably necessary and related to
34 these costs.

35 (7) "Local jurisdiction" means a county, city, town, or port
36 district.

1 NEW SECTION. **Sec. 3.** (1) Local jurisdictions with local economic
2 development projects approved by the department of community, trade,
3 and economic development as provided under subsection (2) of this
4 section may enter into an agreement with the Washington economic
5 development finance authority regarding the issuance of bonds for the
6 purpose of financing local economic development project costs. The
7 agreement shall require that the local jurisdiction: (a) Collect from
8 any lessee of property associated with a local economic development
9 project a payment in an amount at least equal to all leasehold excise
10 taxes that would be imposed on and collected with respect to property
11 associated with the completed local economic development project but
12 for the exemption granted by section 13 of this act; (b) pledge the
13 cleanup payments collected to the payment of these bonds; (c) stop
14 collection of cleanup payments when the bond obligations have been
15 satisfied; (d) notify the lessee of the obligation to pay any leasehold
16 excise taxes which may be due subsequently; and (e) notify the
17 department of revenue, within thirty days of the date the bond
18 obligations have been satisfied, that the collection of cleanup
19 payments has ceased.

20 (2) No local jurisdiction may enter an agreement with the
21 Washington economic development finance authority under this act
22 unless:

23 (a) They have delivered a local economic development project plan
24 to the department of community, trade, and economic development that
25 includes a description of the contemplated property and the local
26 economic development project; the estimated cost of the total project,
27 including both public and private components; the estimated period
28 during which the leasehold excise tax exemption in section 13 of this
29 act is to be operative and cleanup payments from lessees are to be
30 devoted to meeting bond obligations; the proposed use of bond funds
31 financing the public portion of the project; and the estimated amounts
32 to be derived from the cleanup payments during the period in which
33 bonds for the project are being paid off;

34 (b) The department of community, trade, and economic development
35 has reviewed the plan and determined that the project meets the
36 definition of local economic development project under section 2 of
37 this act;

1 (c) The local jurisdiction demonstrates they are working with the
2 department of ecology to clean up the property consistent with the
3 requirements in the model toxics control act, chapter 70.105D RCW.

4 (3) Collection of cleanup payments must cease when the payments are
5 no longer necessary or obligated to pay the costs associated with the
6 local economic development project.

7 NEW SECTION. **Sec. 4.** The local economic development project
8 financing account shall be established by the authority. The proceeds
9 of all cleanup payments collected with respect to property associated
10 with a completed local economic development project shall be deposited
11 into the local economic development project financing account. Only
12 the Washington economic development finance authority may authorize
13 expenditures from the account and no appropriation is required for
14 expenditures. The money in the account must be used for the purposes
15 of bond resolution or trust indenture under which the bonds are issued
16 under this chapter and may not be used to replace or supplant existing
17 funding. The deposit of cleanup payments required under this section
18 shall cease when the authority specifies that all monetary obligations
19 associated with bonds issued to pay a local economic development
20 project's costs have been met.

21 NEW SECTION. **Sec. 5.** In connection with any bonds issued by the
22 authority under the terms of this act, the authority shall enter into
23 agreements with participating local jurisdictions which shall provide
24 for the deposit by each local jurisdiction of all cleanup payments
25 collected on property associated with the completed local economic
26 development project. Cleanup payments shall be disbursed bimonthly
27 into the local economic development project account. Cleanup payments
28 collected shall be sufficient, together with other revenues available
29 to the authority, if any, to: (1) Pay the issuance and administrative
30 fees set by the authority; (2) pay the local economic development
31 project costs financed by the authority, to the extent that the payment
32 of the costs has not otherwise been adequately provided for; (3) pay
33 the principal of, premium, if any, and interest on outstanding bonds of
34 the authority issued to finance the local economic development project
35 costs as the same shall become due and payable; and (4) create and
36 maintain reserves required or provided for in any bond resolution or

1 trust indenture authorizing the issuance of such bonds of the
2 authority. The authority's payments shall not be subject to
3 supervision or regulation by any department, committee, board, body,
4 bureau, or agency of the state other than the authority.

5 NEW SECTION. **Sec. 6.** (1) The authority shall provide the assessor
6 and treasurer of the county within which the local economic development
7 project is located and the department of revenue of the parcel number
8 or numbers and street address or addresses, if any, associated with all
9 property that is part of a local economic development project.

10 (2) The authority may, from time to time, issue its special
11 obligation bonds in order to carry out the purposes of this chapter and
12 to enable the authority to exercise any of the powers granted to it in
13 this chapter. The bonds may be issued on either a taxable or federally
14 tax-exempt basis. The bonds shall be issued pursuant to a bond
15 resolution or trust indenture and shall be payable solely out of the
16 local economic development project financing account created in section
17 4 of this act. The local economic development project financing
18 account shall be funded in whole or in part from moneys paid by one or
19 more local jurisdictions for whose benefit such bonds were issued and
20 from any other sources authorized by law, including from the proceeds
21 of bonds issued by the authority for the purpose of refunding any
22 outstanding bonds of the authority.

- 23 (3) The bonds may be secured by:
- 24 (a) A first lien against any unexpended proceeds of the bonds;
 - 25 (b) A first lien against moneys in the local economic development
26 project financing account created in section 4 of this act;
 - 27 (c) A first or subordinate lien against the cleanup payment
28 receipts of the local jurisdiction or jurisdictions that are collected
29 on property associated with the completed local economic development
30 project or projects;
 - 31 (d) A first or subordinate security interest against any real or
32 personal property, tangible or intangible, of the local jurisdiction or
33 jurisdictions that is associated with the local economic development
34 project;
 - 35 (e) Any other real or personal property of the local jurisdiction
36 or jurisdictions, tangible or intangible;
 - 37 (f) Any combination of (a) through (e) of this subsection; or

1 (g) Any other security the authority may deem appropriate or
2 necessary.

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

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

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

31 (a) The security interests granted by the local jurisdiction to
32 secure repayment of any amounts financed and the performance by the
33 local jurisdiction of its other obligations in the financing;

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

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

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

3 (e) Limitations on the purposes to which, or the investments in
4 which, the proceeds of the sale of any issue of bonds may be applied;

5 (f) Terms pertaining to the issuance of additional parity bonds;

6 (g) Terms pertaining to the incurrence of parity debt;

7 (h) The refunding of outstanding bonds;

8 (i) Procedures, if any, by which the terms of any contract with
9 bondholders may be amended or abrogated;

10 (j) Acts or failures to act that constitute a default by the local
11 jurisdiction or the authority in their respective obligations and the
12 rights and remedies in the event of a default;

13 (k) Terms governing performance by the trustee of its obligation;

14 or

15 (l) Such other additional covenants, agreements, and provisions as
16 are deemed necessary, useful, or convenient by the authority for the
17 security of the holders of the bonds.

18 (6) Bonds may be issued by the authority to refund other
19 outstanding authority bonds, at or before the maturity thereof, and to
20 pay any redemption premium with respect thereto. Bonds issued for such
21 refunding purposes may be combined with bonds issued for the financing
22 or refinancing of new local economic development project costs.
23 Pending the application of the proceeds of the refunding bonds to the
24 redemption of the bonds to be redeemed, the authority may enter into an
25 agreement or agreements with a corporate trustee under section 8 of
26 this act with respect to the interim investment of the proceeds and the
27 application of the proceeds and the earnings on the proceeds to the
28 payment of the principal of and interest on, and the redemption of the
29 bonds to be redeemed.

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

32 (8) Neither the members of the authority, nor its employees or
33 agents, nor any person executing the bonds is liable personally on the
34 bonds or subject to any personal liability or accountability by reason
35 of the issuance of the bonds.

36 (9) The authority may purchase its bonds with any of its funds
37 available for the purchase. The authority may hold, pledge, cancel, or

1 resell the bonds subject to and in accordance with agreements with
2 bondholders.

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

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

25 NEW SECTION. **Sec. 8.** All moneys received by or on behalf of the
26 authority under this chapter, whether as proceeds from the sale of
27 bonds or from participants or from other sources, shall be deemed to be
28 trust funds to be held and applied solely as provided in this chapter.
29 The authority, in lieu of receiving and applying the moneys itself, may
30 enter into an agreement or trust indenture with one or more banks or
31 trust companies having the power and authority to conduct trust
32 business in the state to:

33 (1) Perform all of any part of the obligations of the authority
34 with respect to: (a) Bonds issued by it; (b) the receipt, investment,
35 and application of the proceeds of the bonds and moneys paid by a local
36 jurisdiction or available from other sources for the payment of the

1 bonds; (c) the enforcement of the obligations of a local jurisdiction
2 in connection with the financing or refinancing of any project; and (d)
3 other matters relating to the exercise of the authority's powers under
4 this chapter;

5 (2) Receive, hold, preserve, and enforce any security interest or
6 evidence of security interest granted by a local jurisdiction for
7 purposes of securing the payment of the bonds; and

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

11 NEW SECTION. **Sec. 9.** This chapter supplements and neither
12 restricts nor limits any powers that the state or any local
13 jurisdiction might otherwise have under any laws of this state.

14 NEW SECTION. **Sec. 10.** This chapter provides a complete,
15 additional, and alternative method for accomplishing the purposes of
16 this chapter and shall be regarded as supplemental and additional to
17 powers conferred by other laws. The issuance of bonds and refunding
18 bonds under this chapter need not comply with the requirements of any
19 other law applicable to the issuance of bonds.

20 NEW SECTION. **Sec. 11.** This chapter, being necessary for the
21 welfare of the state and its inhabitants, shall be liberally construed
22 to effect its purposes. Insofar as the provisions of this chapter are
23 inconsistent with the provisions of any general or special law, or
24 parts thereof, the provisions of this chapter shall be controlling.

25 **Sec. 12.** RCW 43.163.010 and 1999 c 294 s 1 are each amended to
26 read as follows:

27 As used in this chapter, the following words and terms have the
28 following meanings, unless the context requires otherwise:

29 (1) "Authority" means the Washington economic development finance
30 authority created under RCW 43.163.020 or any board, body, commission,
31 department or officer succeeding to the principal functions of the
32 authority or to whom the powers conferred upon the authority shall be
33 given by law;

1 (2) "Bonds" means any bonds, notes, debentures, interim
2 certificates, conditional sales or lease financing agreements, lines of
3 credit, forward purchase agreements, investment agreements, and other
4 banking or financial arrangements, guaranties, or other obligations
5 issued by or entered into by the authority. Such bonds may be issued
6 on either a tax-exempt or taxable basis;

7 (3) "Borrower" means one or more public or private persons or
8 entities acting as lessee, purchaser, mortgagor, or borrower who has
9 obtained or is seeking to obtain financing either from the authority or
10 from an eligible banking organization that has obtained or is seeking
11 to obtain funds from the authority to finance a project. A borrower
12 may include a party who transfers the right of use and occupancy to
13 another party by lease, sublease or otherwise, or a party who is
14 seeking or has obtained a financial guaranty from the authority;

15 (4) "Eligible banking organization" means any organization subject
16 to regulation by the director of the department of financial
17 institutions, any national bank, federal savings and loan association,
18 and federal credit union located within this state;

19 (5) "Eligible export transaction" means any preexport or export
20 activity by a person or entity located in the state of Washington
21 involving a sale for export and product sale which, in the judgment of
22 the authority: (a) Will create or maintain employment in the state of
23 Washington, (b) will obtain a material percent of its value from
24 manufactured goods or services made, processed or occurring in
25 Washington, and (c) could not otherwise obtain financing on reasonable
26 terms from an eligible banking organization;

27 (6) "Eligible farmer" means any person who is a resident of the
28 state of Washington and whose specific acreage qualifying for receipts
29 from the federal department of agriculture under its conservation
30 reserve program is within the state of Washington;

31 (7) "Eligible person" means an individual, partnership,
32 corporation, or joint venture carrying on business, or proposing to
33 carry on business within the state and is seeking financial assistance
34 under RCW 43.163.210;

35 (8) "Financial assistance" means the infusion of capital to persons
36 for use in the development and exploitation of specific inventions and
37 products;

1 (9) "Financing document" means an instrument executed by the
2 authority and one or more persons or entities pertaining to the
3 issuance of or security for bonds, or the application of the proceeds
4 of bonds or other funds of, or payable to, the authority. A financing
5 document may include, but need not be limited to, a lease, installment
6 sale agreement, conditional sale agreement, mortgage, loan agreement,
7 trust agreement or indenture, security agreement, letter or line of
8 credit, reimbursement agreement, insurance policy, guaranty agreement,
9 or currency or interest rate swap agreement. A financing document also
10 may be an agreement between the authority and an eligible banking
11 organization which has agreed to make a loan to a borrower;

12 (10) "Plan" means the general plan of economic development finance
13 objectives developed and adopted by the authority, and updated from
14 time to time, as required under RCW 43.163.090;

15 (11) "Economic development activities" means activities related to:
16 Manufacturing, processing, research, production, assembly, tooling,
17 warehousing, airports, docks and wharves, mass commuting facilities,
18 high-speed intercity rail facilities, public broadcasting, pollution
19 control, brownfield cleanup and development, solid waste disposal,
20 federally qualified hazardous waste facilities, energy generating,
21 conservation, or transmission facilities, and sports facilities and
22 industrial parks and activities conducted within a federally designated
23 enterprise or empowerment zone or geographic area of similar nature;

24 (12) "Project costs" means costs of:

25 (a) Acquisition, lease, construction, reconstruction, remodeling,
26 refurbishing, rehabilitation, extension, and enlargement of land,
27 rights to land, buildings, structures, docks, wharves, fixtures,
28 machinery, equipment, excavations, paving, landscaping, utilities,
29 approaches, roadways and parking, handling and storage areas, and
30 similar ancillary facilities, and any other real or personal property
31 included in an economic development activity;

32 (b) Architectural, engineering, consulting, accounting, and legal
33 costs related directly to the development, financing, acquisition,
34 lease, construction, reconstruction, remodeling, refurbishing,
35 rehabilitation, extension, and enlargement of an activity included
36 under subsection (11) of this section, including costs of studies
37 assessing the feasibility of an economic development activity;

1 (c) Finance costs, including the costs of credit enhancement and
2 discounts, if any, the costs of issuing revenue bonds, and costs
3 incurred in carrying out any financing document;

4 (d) Start-up costs, working capital, capitalized research and
5 development costs, capitalized interest during construction and during
6 the eighteen months after estimated completion of construction, and
7 capitalized debt service or repair and replacement or other appropriate
8 reserves;

9 (e) The refunding of any outstanding obligations incurred for any
10 of the costs outlined in this subsection; and

11 (f) Other costs incidental to any of the costs listed in this
12 section;

13 (13) "Product" means a product, device, technique, or process that
14 is or may be exploitable commercially. "Product" does not refer to
15 pure research, but shall be construed to apply to products, devices,
16 techniques, or processes that have advanced beyond the theoretic stage
17 and are readily capable of being, or have been, reduced to practice;

18 (14) "Financing agreements" means, and includes without limitation,
19 a contractual arrangement with an eligible person whereby the authority
20 obtains rights from or in an invention or product or proceeds from an
21 invention or product in exchange for the granting of financial and
22 other assistance to the person.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.29A
24 RCW to read as follows:

25 All leasehold interests in completed local economic development
26 projects financed under this act are exempt from tax under this chapter
27 for the period of time lessees are making cleanup payments as required
28 by this act.

29 NEW SECTION. **Sec. 14.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act

1 constitute a new chapter in Title 43 RCW.

--- **END** ---