

SENATE BILL REPORT

2SSB 6140

As Amended by House, March 1, 2012

Title: An act relating to local economic development financing.

Brief Description: Concerning local economic development financing.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kilmer, Becker, King, Regala, Conway, Shin and Chase).

Brief History:

Committee Activity: Economic Development, Trade & Innovation: 1/18/12, 1/30/12 [DPS, w/oRec].

Ways & Means: 2/06/12, 2/07/12 [DP2S, DNP, w/oRec].

Passed Senate: 2/13/12, 34-14.

Passed House: 3/01/12, 88-9.

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

Majority Report: That Substitute Senate Bill No. 6140 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Chase, Vice Chair; Ericksen, Hatfield, Kilmer, Shin and Zarelli.

Minority Report: That it be referred without recommendation.

Signed by Senators Baumgartner, Ranking Minority Member; Holmquist Newbry.

Staff: Jack Brummel (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6140 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Brown, Conway, Fraser, Harper, Hatfield, Hewitt, Kastama, Keiser, Kohl-Welles, Pridemore, Regala and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford and Schoesler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senator Baumgartner.

Staff: Steve Jones (786-7440)

Background: Most states have legislation allowing state and local governments to issue tax free revenue bonds to finance private investment in the aid of job creation and diversification of their economic base. In 1981 it was unclear whether tax-exempt financing would be constitutional in this state – a state constitutional amendment and implementing legislation passed that year allowing municipalities to create public corporations with authority to issue tax free revenue bonds for industrial development. A number of financing authorities have subsequently been created to facilitate financing of facilities such as higher educational facilities, health care facilities, and housing facilities. These financing authorities have not relied on the 1981 constitutional amendment.

In 1989 the Washington Economic Development Finance Authority (WEDFA) was created. WEDFA is authorized to issue taxable and nontaxable nonrecourse revenue bonds to provide businesses and farm enterprises access to capital at terms and rates comparable to large corporations. The state Supreme Court ruled, in a case challenging WEDFA's authority to issue bonds in a manner inconsistent with the terms of the 1981 constitutional amendment, that the limitations of the amendment apply only to bonds issued pursuant to its implementing legislation and do not limit any other types of bonds that legally can be issued. The court ordered the State Treasurer to sign the bond issuance resolution at issue in the case. Since then WEDFA has issued millions of dollars in both taxable and nontaxable revenue bonds.

Public corporations created under the 1981 implementing legislation do not have the authority to issue taxable revenue bonds and are unable to participate in some recently developed federal programs designed to assist local businesses and economic development projects.

Summary of Second Substitute Bill: Municipalities with public corporations issuing industrial revenue bonds prior to 2012 may create economic development finance authorities to provide nonrecourse revenue bond financing, on a taxable or nontaxable basis, for a variety of economic development activities. It is illegal for directors, officers, agents, or employees of an authority to have any interest in property, services, or materials used in connection with any economic development activity financed by the authority – a violation of this provision is a gross misdemeanor.

Prior to issuing the bonds, the authority must obtain a letter of credit certifying the credit worthiness of the borrower. (This does not apply if the bonds are privately placed with an institutional investor.) The local governments creating the authority may not invest in the bonds issued by the authority.

The finances of an authority are subject to examination by the creating municipality and the state Auditor's Office. Authorities may receive no appropriation of state funds and municipalities may not provide money or property in aid of an authority. Authorities are not municipal corporations or political subdivisions of the state.

Authorities are authorized to participate fully in federal and other governmental economic development finance programs and conduct a finance program for new product development.

Authorities must establish operating procedures and a general plan of economic development finance. Authorities may exercise a variety of powers, including acquiring property, soliciting grants and loans, acting as an agent for governmental agencies, and establishing guidelines for the participation by banking organizations in programs conducted by an authority.

Authorities may not act as a bank or engage in financing carried out by the state's Housing Finance Commission, Health Care Facilities Authority, or Higher Education Facilities Authority. Bonds issued by an authority are not considered a debt, and do not pledge the faith and credit, of the state or creating municipality. Such bonds are payable solely from revenue derived as a result of economic development activity funded by the bonds and other private resources. Neither bond proceeds nor bond payments constitute public money or property and no tax funds or governmental revenue may be used to pay the principal or interest on the bonds.

All monies received by an authority must be held in trust to carry out the purposes of the act. An authority may enter into a trust agreement with entities authorized to conduct trust business in the state to perform obligations of the authority and act on its behalf. The bonds of an authority are securities and the holders of such bonds may protect their rights through legal processes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Economic Development, Trade & Innovation): PRO: This is about modernizing economic development. The Feds have created a lot more tools that small local issuers are not able to take advantage of because they are on a taxable basis. This is important to do because local issuers of bonds are more closely tied to the economic activities of local communities and have a better sense of where the need is.

OTHER: It would be advantageous to locals to be able to issue taxable and tax exempt financing. WEDFA has concerns about requiring WEDFA to coordinate with local bond issuers. We shouldn't create more bond issuers than we already have. WEDFA's broad authority may not be needed at the local level. The bill could use some technical clarification.

Persons Testifying (Economic Development, Trade & Innovation): PRO: Senator Kilmer, prime sponsor.

OTHER: Rodney Wendt, WEDFA; Kim Herman, WA State Housing Finance Commission.

Staff Summary of Public Testimony on Substitute as Passed by Economic Development, Trade & Innovation (Ways & Means): PRO: This bill provides greater flexibility to allow economic development organizations to take advantage of various federal programs for stimulating job growth. No public funds are at risk; no public debt is created. There is no cost or risk to the taxpayers of the state.

Persons Testifying (Ways & Means): PRO: Chris Green, Economic Development Board of Pierce County; James Evans, WA Economic Development Assn.

House Amendment(s): Adds language clarifying that certain cities, counties, and port districts are only given the authority to create local economic development finance authorities because of their expertise in tax-exempt nonrecourse revenue bond financing.

Removes language stating that the boards of an authority and a public corporation may be composed of the same members. Removes language stating that a municipality may obligate an authority to assume responsibilities of a public corporation.

Clarifies the credit-related documents that an authority must obtain before issuing bonds. Specifies that a local economic development finance authority's activities, with two exceptions, must take place wholly within the boundaries of the municipality that created the authority.