

---

ENGROSSED SUBSTITUTE SENATE BILL 5844

---

State of Washington

62nd Legislature

2011 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kilmer, Parlette, Murray, Kastama, Fraser, Hobbs, Hatfield, Regala, Sheldon, and Hewitt)

READ FIRST TIME 03/25/11.

1 AN ACT Relating to financing local government infrastructure;  
2 amending RCW 43.155.010, 43.155.020, 43.155.050, and 43.155.060; adding  
3 a new section to chapter 43.155 RCW; and repealing RCW 43.155.055,  
4 43.155.070, 43.155.075, 43.155.100, 43.155.110, and 43.155.120.

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

6 **Sec. 1.** RCW 43.155.010 and 1996 c 168 s 1 are each amended to read  
7 as follows:

8 (1) ~~The legislature finds that ((there exists in the state of~~  
9 ~~Washington over four billion dollars worth of critical projects for the~~  
10 ~~planning, — acquisition, — construction, — repair, — replacement,~~  
11 ~~rehabilitation, — or improvement of streets and roads, bridges, water~~  
12 ~~systems, and storm and sanitary sewage systems. The December, 1983~~  
13 ~~Washington state public works report prepared by the planning and~~  
14 ~~community affairs agency documented that local governments expect to be~~  
15 ~~capable of financing over two billion dollars worth of the costs of~~  
16 ~~those critical projects but will not be able to fund nearly half of the~~  
17 ~~documented needs.~~

18 ~~The legislature further finds that Washington's local governments~~

1 have unmet financial needs for solid waste disposal, including  
2 recycling, and encourages the board to make an equitable geographic  
3 distribution of the funds.

4 It is the policy of the state of Washington to encourage self-  
5 reliance by local governments in meeting their public works needs and  
6 to assist in the financing of critical public works projects by making  
7 loans, financing guarantees, and technical assistance available to  
8 local governments for these projects.)), since the creation of the  
9 public works board and the public works assistance account twenty-five  
10 years ago, over two billion dollars in low interest loans to local  
11 governments have financed needed infrastructure repairs and  
12 improvements. Many of these loans have built wastewater treatment  
13 systems resulting in water quality improvements in rivers, lakes, and  
14 Puget Sound. Some of these loans have improved the safety and  
15 efficiency of drinking water systems. Other loans repaired roads and  
16 bridges and financed solid waste recycling programs. Some of these  
17 public work improvements would not have occurred without the low  
18 interest public works loan. Others would have been delayed, and many  
19 would have been constructed with a higher financial burden on utility  
20 ratepayers. Even with these successes, there remains a significant  
21 backlog of projects to repair and improve public infrastructure.

22 (2) The legislature finds that capital facilities planning by local  
23 government has improved, and there are a variety of new grant and loan  
24 programs for local government infrastructure financed with state and  
25 federal resources. Prior studies of state programs that provide  
26 assistance for local infrastructure have identified duplication and  
27 redundancy among the various programs leading to coordination  
28 challenges in determining the entire state investment in a particular  
29 project. These studies have also identified the need to clarify state  
30 policy objectives for programs that provide state financial assistance  
31 for local government infrastructure. Further, these studies have found  
32 that state assistance can be delayed by unnecessary steps in the  
33 process and that programs do not rapidly adapt to emerging needs.

34 (3) The legislature also finds that low interest loans can provide  
35 significant assistance for jurisdictions that have difficulty in  
36 accessing traditional private market tax exempt bond financing.

37 (4) The legislature recognizes that prior efforts to reform

1 programs providing assistance for local infrastructure have lacked a  
2 clear and strong mandate to consolidate and simplify the many statutes,  
3 boards, programs, and accounts.

4 (5) The legislature intends to modernize state programs providing  
5 assistance for local infrastructure. The programs include the public  
6 works assistance account, the clean water and drinking water state  
7 revolving funds, the centennial clean water program, the water system  
8 acquisition and rehabilitation program, the community economic  
9 revitalization board, and other funds and appropriations administered  
10 by state agencies that address any of the policy objectives in section  
11 2(1)(d) of this act. The legislature intends to:

12 (a) Clarify the policy objectives of state assistance for local  
13 infrastructure;

14 (b) Focus the criteria to prioritize investment of state resources  
15 according to those policy objectives;

16 (c) Eliminate redundancy and duplication among the various  
17 infrastructure assistance programs;

18 (d) Increase the speed of delivering state assistance for local  
19 infrastructure and the ability to respond to emerging infrastructure  
20 needs;

21 (e) Maximize the acquisition and use of federal funding sources;

22 (f) Ensure transparency in total state and federal assistance for  
23 individual projects;

24 (g) Improve access to the lowest cost private market financing; and

25 (h) Ensure periodic review of progress on meeting the objectives in  
26 (a) through (g) of this subsection.

27 (6) It is state policy that planning for, developing, and  
28 adequately maintaining local public infrastructure is the  
29 responsibility of local governments. In the provision of utility  
30 services, it is the responsibility of local governments to establish  
31 adequate rates to pay for these systems. While reinforcing that policy  
32 of local responsibility, the legislature recognizes that, in some  
33 cases, compelling state policy objectives justify providing state  
34 assistance for both utility-based and nonutility-based infrastructure.  
35 The legislature intends to create a system for providing assistance for  
36 local infrastructure that is organized around the state policy  
37 objectives for that assistance while reinforcing this policy of local  
38 responsibility.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 43.155 RCW  
2 to read as follows:

3        (1) The board must prepare and submit to the appropriate committees  
4 of the legislature by November 1, 2011, an implementation plan to  
5 create a reformed state system for providing assistance for local  
6 infrastructure. The implementation plan must include draft legislation  
7 and the organizational and budgetary changes necessary to implement the  
8 new system in time for the 2013-2015 budget cycle. In developing the  
9 implementation plan, the board must consult with the appropriate state  
10 agencies that provide infrastructure funding and technical assistance.  
11 In addition, the board must work in cooperation with local governments  
12 or entities that would benefit from state and federal infrastructure  
13 funding and technical assistance regarding the policy objectives  
14 described in (d) of this subsection. The new system must have the  
15 following characteristics:

16        (a) Transparency. State assistance for a specific project must be  
17 a consolidated package of loans and/or grants from all sources. For  
18 large, multiphased projects, the consolidated package of assistance may  
19 describe an intent to fund multiple phases over more than one biennium.  
20 In accepting the package of state assistance, the applicant must agree  
21 to not seek additional state assistance unless there are significant  
22 changes to the project or fiscal capacity of the applicant. All state  
23 assistance in the form of low interest loans must describe the annual  
24 debt service value of the low interest loan compared to the likely  
25 annual debt service payments with private market financing. It is the  
26 responsibility of the board to consolidate reporting of all state  
27 assistance for local infrastructure to ensure transparency;

28        (b) Accountability. Applicants for state assistance for local  
29 infrastructure must accept the policy of local responsibility described  
30 in RCW 43.155.010. The board must collect and monitor information  
31 necessary to report to the legislature progress in meeting this policy.  
32 The board must also offer technical assistance to eligible recipients  
33 that are most challenged by this policy. The board must coordinate  
34 with the appropriate agencies to establish minimum requirements for  
35 eligibility for state assistance for local infrastructure. Applicants  
36 for state assistance must demonstrate that sound financial practices,  
37 proper operation, management, maintenance, and ongoing oversight are in  
38 place to ensure the long-term sustainability and timely future

1 replacement of the proposed project. Applicants not meeting these  
2 minimum requirements must agree to an implementation plan to assure  
3 they will meet these requirements as a condition of accepting state  
4 assistance;

5 (c) Efficiency and performance. The board and other appropriate  
6 state agencies must develop a system for applying for state assistance  
7 that standardizes data elements that are common among the applications  
8 for various kinds of assistance and collects the sufficient information  
9 needed to prioritize applications within each policy objective.  
10 Application must be redesigned to reduce steps that unnecessarily delay  
11 projects. Organizational responsibilities to implement the new system  
12 must minimize the portion of infrastructure assistance funding diverted  
13 to agency indirect administrative expenses. Measures of efficiency and  
14 performance must be developed and reported every two years, including  
15 the portion of state assistance funding that is used to administer the  
16 assistance programs and the portion that is spent on agency indirect  
17 administrative expenses. The performance measures must address the  
18 specific policy objectives for each policy focused investment; and

19 (d) Policy-focused investments. The legislature intends to  
20 consolidate appropriations from all available funds for the following  
21 policy-focused local infrastructure investments in (d)(i) through (vi)  
22 of this subsection. Each policy-focused appropriation, including  
23 appropriations from the public works assistance account, must be to the  
24 agency with the greatest expertise in that policy objective. The board  
25 and each appropriate state agency must develop financial policies to  
26 address account integrity, repayment terms, and other state and federal  
27 requirements. In consultation with the appropriate agencies, the board  
28 must conduct a biennial survey and analysis of local infrastructure  
29 needs and available resources that are related to state policy  
30 objectives for local infrastructure assistance. Based on that  
31 analysis, the board must recommend to the governor and legislature  
32 investment levels towards the various state policy objectives, within  
33 expected levels of funding for state assistance. The board may also  
34 recommend new kinds of infrastructure assistance that address emerging  
35 state policy objectives.

36 (i) Water quality. State assistance for water quality  
37 infrastructure and other water quality mitigation assets must support  
38 projects that result in the greatest improvements in the state's

1 surface and groundwater, for communities least able to pay for those  
2 projects or for jurisdictions who are early adopters of new regulations  
3 and effective new technology. Water quality projects must be evaluated  
4 and prioritized against these policy objectives by the department of  
5 ecology. The department of ecology may allocate up to fifteen percent  
6 of the appropriation of the public works assistance account for water  
7 quality for emergency repairs and preconstruction activities.

8 (ii) Safe drinking water. State assistance for drinking water  
9 infrastructure must support projects that address or prevent violations  
10 of applicable federal, state, and local drinking water requirements,  
11 increase a public water system's ability to protect the public's  
12 health, assist those communities least able to pay for such projects,  
13 and promote increased water or energy efficiency or innovation that  
14 will improve environmental sustainability and protect public health.  
15 State assistance may also support projects that will restructure or  
16 consolidate noncompliant, failing, or struggling public drinking water  
17 systems that have water quality problems or deteriorated  
18 infrastructure. The department of health must evaluate and prioritize  
19 safe drinking water projects based on these policy objectives. The  
20 department of health may allocate up to fifteen percent of the  
21 appropriation of the public works assistance account for safe drinking  
22 water for emergency repairs and preconstruction activities.

23 (iii) Storm water. State assistance for storm water infrastructure  
24 must support projects that result in the greatest improvements  
25 necessary to meet national pollution discharge elimination system  
26 requirements for communities least able to pay for those projects or  
27 for jurisdictions who are early adopters of new regulations and  
28 effective new technology. Storm water projects must be evaluated and  
29 prioritized against these policy objectives by the department of  
30 ecology. The department of ecology may allocate up to fifteen percent  
31 of the appropriation of the public works assistance account for storm  
32 water for emergency repairs and preconstruction activities.

33 (iv) Economic development. State assistance for economic  
34 development infrastructure must support the different economic  
35 development challenges of different regions of the state. Economic  
36 development projects in rural areas of the state with high unemployment  
37 must be evaluated based on the retention or creation of family wage  
38 jobs and long-term employment growth potential compared to the existing

1 employment opportunities in the community. Economic development  
2 projects in areas of the state with high potential for development of  
3 innovative products and services, including innovation partnership  
4 zones under RCW 43.330.270, must be evaluated based on the prospects  
5 for long-term employment growth. Economic development projects in  
6 urban and suburban areas of the state must be evaluated based on the  
7 number of family wage jobs retained or created and on how the project  
8 will support increased density and development along efficient  
9 multimodal transportation systems. The kinds of infrastructure that  
10 may be supported within the economic development policy objective  
11 include all those defined as public facilities in RCW 43.160.020 and  
12 any other public capital asset that supports the policy objectives.  
13 Economic development projects must be evaluated and prioritized against  
14 these policies by the community economic revitalization board under  
15 chapter 43.160 RCW in consultation with the economic development  
16 commission under chapter 43.162 RCW.

17 (v) Access to private financing. State assistance for local  
18 infrastructure must expand capacity to improve local infrastructure.  
19 Improving access to and reducing the cost of private market financing  
20 for local government infrastructure supports the foundation policy of  
21 local responsibility while expanding the capacity to improve local  
22 infrastructure. The board and the state treasurer must develop an  
23 application and due diligence process for the evaluation and  
24 prioritization of projects receiving assistance to improve access to  
25 private financing under RCW 43.155.060.

26 (vi) Solid waste and recycling. State assistance for reduction of  
27 solid waste and improved recycling must support projects that divert  
28 waste from landfills and improve efficient recycling efforts in  
29 communities least able to pay for those projects. Solid waste and  
30 recycling projects must be evaluated and prioritized against these  
31 policy objectives by the department of ecology.

32 (vii) Flood levies. State assistance for flood levy repairs and  
33 improvements must support projects that will achieve the greatest  
34 reduction of the risk to public safety and property from levies at risk  
35 of failure due to changes in flood water flows and deterioration of the  
36 levy structural capacity. State assistance is not intended to supplant  
37 the responsibility of local government and property owners benefiting  
38 from levies to adequately fund the routine repair and maintenance of

1 levies. Jurisdictions accepting state assistance for flood levies must  
2 demonstrate compliance with the responsibility to adequately fund levy  
3 routine repair and maintenance or agree to a plan to meet that  
4 responsibility. Jurisdictions seeking state assistance for levies must  
5 demonstrate adequate land use policies that prevent inappropriate  
6 development in flood plains, prevent encroachment upon flood levies,  
7 and prevent the inappropriate use of flood levies. Flood levy projects  
8 must be evaluated and prioritized against these policy objectives by  
9 the department of ecology.

10 (2) The implementation plan must also make recommendations on how  
11 nonrate-based infrastructure could receive state infrastructure  
12 assistance.

13 **Sec. 3.** RCW 43.155.020 and 2009 c 565 s 33 are each amended to  
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section (~~(shall)~~) apply throughout this chapter.

17 (1) "Board" means the public works board created in RCW 43.155.030.

18 (2) "Capital facility plan" means a capital facility plan required  
19 by the growth management act under chapter 36.70A RCW or, for local  
20 governments not fully planning under the growth management act, a plan  
21 required by the public works board.

22 (3) "Department" means the department of commerce.

23 (4) (~~("Financing guarantees" means the pledge of money in the  
24 public works assistance account, or money to be received by the public  
25 works assistance account, to the repayment of all or a portion of the  
26 principal of or interest on obligations issued by local governments to  
27 finance public works projects.)~~) "Contingent loan agreement" means an  
28 agreement between the state and a local government in which the state  
29 provides an absolute and unconditional commitment to make a loan to a  
30 local government from the infrastructure financing account in order to  
31 enhance the credit of local government borrowing.

32 (5) "Local governments" means cities, towns, counties, special  
33 purpose districts, and any other municipal corporations or quasi-  
34 municipal corporations in the state excluding school districts (~~and  
35 port districts~~)).

36 (6) "Public works project" means a project of a local government  
37 for the planning, acquisition, construction, repair, reconstruction,



1 replacement, rehabilitation, or improvement of streets and roads,  
2 bridges, water systems, ~~((or))~~ storm and sanitary sewage systems and  
3 solid waste facilities, or other capital facilities that support the  
4 policy objectives of the state's local infrastructure investments  
5 described in section 2 of this act, including recycling facilities. A  
6 planning project may include the compilation of biological,  
7 hydrological, or other data on a county, drainage basin, or region  
8 necessary to develop a base of information for a capital facility plan.

9 ~~(7) ("Solid waste or recycling project" means remedial actions~~  
10 ~~necessary to bring abandoned or closed landfills into compliance with~~  
11 ~~regulatory requirements and the repair, restoration, and replacement of~~  
12 ~~existing solid waste transfer, recycling facilities, and landfill~~  
13 ~~projects limited to the opening of landfill cells that are in existing~~  
14 ~~and permitted landfills.~~

15 ~~(8))~~ "Technical assistance" means training and other services  
16 provided to local governments to help such local governments:

17 (a) ~~((Help such local governments))~~ Plan, apply, and qualify for  
18 loans ~~((and financing guarantees from the board))~~, grants, and  
19 contingent loan agreements; and

20 (b) ~~((help local governments))~~ Improve their ability to plan for,  
21 finance, acquire, construct, repair, replace, rehabilitate, and  
22 maintain public facilities; and

23 (c) Comply with the policies of local responsibility described in  
24 section 2 of this act.

25 **Sec. 4.** RCW 43.155.050 and 2010 1st sp.s. c 37 s 932 are each  
26 amended to read as follows:

27 The public works assistance account is hereby established in the  
28 state treasury. Money may be placed in the public works assistance  
29 account from the proceeds of bonds when authorized by the legislature  
30 or from any other lawful source. Money in the public works assistance  
31 account ~~((shall))~~ must be used to make loans, grants, and to give  
32 financial guarantees to local governments for public works projects.  
33 Moneys in the account may also be appropriated to provide for state  
34 match requirements ~~((under federal law for projects and activities~~  
35 ~~conducted and financed by the board under the drinking water assistance~~  
36 ~~account))~~ for federal assistance for clean water and drinking water  
37 local infrastructure. Moneys in the account may also be appropriated

1 for payments required under contingent loan agreements for  
2 infrastructure projects. Moneys in the account may be appropriated to  
3 provide financial assistance through the water system acquisition and  
4 rehabilitation program created in chapter 70.119A RCW. Not more than  
5 fifteen percent of the biennial capital budget appropriation to the  
6 public works board from this account may be expended or obligated for  
7 preconstruction loans, emergency loans, or loans for capital facility  
8 planning under this chapter; of this amount, not more than ten percent  
9 of the biennial capital budget appropriation may be expended for  
10 emergency loans and not more than one percent of the biennial capital  
11 budget appropriation may be expended for capital facility planning  
12 loans. ~~((For the 2007-2009 biennium, moneys in the account may be used~~  
13 ~~for grants for projects identified in section 138, chapter 488, Laws of~~  
14 ~~2005 and section 1033, chapter 520, Laws of 2007. During the 2009-2011~~  
15 ~~fiscal biennium, sums in the public works assistance account may be~~  
16 ~~used for the water pollution control revolving fund program match in~~  
17 ~~section 3013, chapter 36, Laws of 2010 1st sp. sess. During the 2009-~~  
18 ~~2011 fiscal biennium, the legislature may transfer from the job~~  
19 ~~development fund to the general fund such amounts as reflect the excess~~  
20 ~~fund balance of the fund.))~~

21 **Sec. 5.** RCW 43.155.060 and 1988 c 93 s 2 are each amended to read  
22 as follows:

23 (1) In order to aid the financing of public works projects, the  
24 board may:

25 ~~((1) Make low interest or interest free loans to local governments~~  
26 ~~from the public works assistance account or other funds and accounts~~  
27 ~~for the purpose of assisting local governments in financing public~~  
28 ~~works projects. The board may require such terms and conditions and~~  
29 ~~may charge such rates of interest on its loans as it deems necessary or~~  
30 ~~convenient to carry out the purposes of this chapter. Money received~~  
31 ~~from local governments in repayment of loans made under this section~~  
32 ~~shall be paid into the public works assistance account for uses~~  
33 ~~consistent with this chapter))~~

34 (a) Make loans to local governments to assist those local  
35 governments to pay all or a portion of the principal of or interest on  
36 obligations issued to finance infrastructure projects pursuant to  
37 contingent loan agreements; and

1       (b)(i) Coordinate with the Washington state treasurer who, on  
2 behalf of the state of Washington, may prescribe the terms of and enter  
3 into a contingent loan agreement between the state and a local  
4 government if the state treasurer determines that such a contingent  
5 loan agreement is financially prudent and is consistent with the  
6 provisions of this chapter. Contingent loan agreements may be entered  
7 into by the state treasurer only with local governments whose limited  
8 tax general obligations or senior revenue obligations, as applicable to  
9 the obligations concerned, are rated not higher than A1 or A+ by at  
10 least one of the nationally recognized rating agencies.

11       (ii) The state's obligation to make any loan to a local government  
12 pursuant to the terms of a contingent loan agreement is subject to  
13 appropriation from the public works assistance account.

14       (iii) The office of the state treasurer may charge a fee to local  
15 governments to recover the costs of creating the contingent loan  
16 agreements.

17       (iv) In order to provide for the state's obligations under the  
18 terms of contingent loan agreements, the legislature must provide, from  
19 time to time in appropriations acts, for such amounts as may be  
20 required to make timely payments from the infrastructure financing  
21 account.

22       ~~(2) ((Pledge money in the public works assistance account, or money~~  
23 ~~to be received by the public works assistance account, to the repayment~~  
24 ~~of all or a portion of the principal of or interest on obligations~~  
25 ~~issued by local governments to finance public works projects. The~~  
26 ~~board shall not pledge any amount greater than the sum of money in the~~  
27 ~~public works assistance account plus money to be received from the~~  
28 ~~payment of the debt service on loans made from that account, nor shall~~  
29 ~~the board))~~ Neither the board nor the state treasurer may pledge the  
30 faith and credit or the taxing power of the state or any agency or  
31 subdivision thereof to the repayment of obligations issued by any local  
32 government.

33       (3) In order to aid the financing of public works projects, the  
34 board may:

35       (a) Create such subaccounts in the public works assistance account  
36 as the board deems necessary to carry out the purposes of this  
37 chapter((-)); and

1       (~~(4)~~) (b) Provide a method for the allocation of loans (~~and~~  
2 ~~financing guarantees~~), grants, and contingent loan agreements and the  
3 provision of technical assistance under this chapter.

4       (4) All local public works projects aided in whole or in part under  
5 the provisions of this chapter (~~shall~~) must be put out for  
6 competitive bids, except for emergency public works under RCW  
7 43.155.065 for which the recipient jurisdiction (~~shall~~) must comply  
8 with this requirement to the extent feasible and practicable. The  
9 competitive bids called for (~~shall~~) must be administered in the same  
10 manner as all other public works projects put out for competitive  
11 bidding by the local governmental entity aided under this chapter.

12       NEW SECTION. Sec. 6. The following acts or parts of acts are each  
13 repealed:

14       (1) RCW 43.155.055 (Water storage projects and water systems  
15 facilities subaccount) and 2003 c 330 s 1;

16       (2) RCW 43.155.070 (Eligibility, priority, limitations, and  
17 exceptions) and 2009 c 518 s 16 & 2008 c 299 s 25;

18       (3) RCW 43.155.075 (Loans for public works projects--Statement of  
19 environmental benefits--Development of outcome-focused performance  
20 measures) and 2001 c 227 s 10;

21       (4) RCW 43.155.100 (Water conservation account) and 2002 c 329 s  
22 11;

23       (5) RCW 43.155.110 (Puget Sound partners) and 2007 c 341 s 25; and

24       (6) RCW 43.155.120 (Administering funds--Preference to an evergreen  
25 community) and 2008 c 299 s 30.

--- END ---