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**ENGROSSED SENATE BILL 5624**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Keiser, Honeyford, and Conway

AN ACT Relating to financing essential public infrastructure; amending RCW 43.155.020, 43.155.040, and 43.155.050; adding a new section to chapter 43.155 RCW; adding a new chapter to Title 39 RCW; creating a new section; and providing a contingent effective date.

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

**PART I**

**FINDINGS AND INTENT**

NEW SECTION. **Sec.**  The legislature finds that access to low-cost financing from the municipal bond market for essential public infrastructure is impaired for local governments that need to borrow small amounts or that access the capital market infrequently. Prior efforts to finance essential public infrastructure projects with state tax resources result in competition between those projects and other essential demands on those state taxes. That competition has eroded the reliability of the state tax funded public infrastructure financing programs, creating uncertainty and delay in improving public infrastructure. The legislature intends to improve access and reliability to low-cost financing for essential public infrastructure projects by providing credit enhancements and pooling access to private market capital.

**PART II**

**STATE FINANCE COMMITTEE PROVISIONS**

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

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of a local government entity or a fund thereof, where the local government entity agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers.

(2) "Credit enhancement program" means the essential public works bond guarantee established by this chapter.

(3) "Essential public infrastructure project" or "project" is a project of a local government approved by the public works board under the provisions of section 304 of this act.

(4) "Guaranteed bond" means a bond that has been approved for credit enhancement pursuant to section 202 of this act by the state treasurer in accordance with policies established by the state finance committee.

(5) "Local government" means any county, city, town, port, water-sewer district, public utility district, metro-park district, park and recreation district, fire district, emergency medical services district, flood zone district, irrigation district, or library district in Washington state.

(6) "Paying agent" means the paying agent selected, from time to time, for a bond pursuant to state law.

(7) "Public works board" or "board" means the public works board or its successor organizations established in RCW 43.155.030.

NEW SECTION. **Sec.**  (1)(a) The full faith, credit, and taxing power of the state may be pledged to guarantee full and timely payment of the principal of and interest on bonds issued for essential public infrastructure projects as such payments become due. However, in the event of any acceleration of the due date of the principal by reason of mandatory redemption or acceleration resulting from default, the payments guaranteed shall be made in the amounts and at the times as payments of principal would have been due had there not been any acceleration.

(b) A guarantee pledged under (a) of this subsection does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guarantee provided to that bond under the provisions of this chapter.

(2)(a) The state pledges to and agrees with the owners of any guaranteed bonds that the state will not alter, impair, or limit the rights vested by the credit enhancement program with respect to a guaranteed bond until that guaranteed bond, together with applicable interest, is fully paid and discharged. However, this chapter does not preclude an alteration, impairment, or limitation if full provision is made by law for the payment in full of an outstanding guaranteed bond.

(b) Each local government may refer to this pledge and undertaking by the state in its guaranteed bonds in accordance with rules adopted by the state finance committee.

(3) Only validly issued bonds issued after the effective date of this section may be guaranteed under this chapter.

NEW SECTION. **Sec.**  The state finance committee must adopt rules that establish the financial criteria to be met before any credit enhancement can be provided under this chapter. The state finance committee may also establish a program, by rule, that allows the state treasurer to issue bonds to support multiple local government projects that have been approved by the public works board in accordance with this chapter.

NEW SECTION. **Sec.**  (1)(a) Any local government, by resolution of its governing body, may request that the state treasurer issue a certificate evidencing the state's guarantee, under this chapter, of its bonds for essential public infrastructure.

(b) After reviewing the request, if the state treasurer determines that the local government is eligible under rules adopted by the state finance committee, and the project has been approved by the public works board under provisions of section 304 of this act, the state treasurer must promptly issue the certificate as to specific bonds of the local government and provide that certificate to the requesting local government.

(c) The local government receiving the certificate and all other persons may rely on the certificate as evidencing the guarantee for bonds issued within one hundred twenty days, without making further inquiry during that time.

(2) Any local government that has issued guaranteed bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter, may not, unless approved by the state treasurer under rules adopted by the state finance committee, issue any additional bonds, other than refunding bonds.

(3) The state finance committee may establish by rule fees sufficient to cover the costs of administering this chapter.

NEW SECTION. **Sec.**  (1)(a) The treasurer for each local government with outstanding, unpaid guaranteed bonds shall transfer money sufficient for each scheduled debt service payment to its paying agent, a trustee, a custodian, or to the state treasurer no fewer than ten days before any principal or interest payment date for the guaranteed bonds.

(b) A treasurer for a local government who is unable to transfer a scheduled debt service payment on the transfer date must immediately notify the state treasurer of that inability by any method designated by the state treasurer for that notice.

(2) If sufficient funds are not transferred to the paying agent or the trustee as required by subsection (1) of this section, the paying agent or trustee shall immediately notify the state treasurer of that failure by any method designated by the state treasurer for such notification.

(3)(a) If sufficient money to pay the scheduled debt service payment has not been so transferred to the paying agent, trustee, custodian, or state treasurer, the state treasurer must make provision for its payment prior to the scheduled debt service payment date.

(b) The payment by the state treasurer:

(i) Discharges the obligation of the issuing local government to its bond owners for the payment, but does not retire any bond that has matured; and

(ii) Transfers the rights represented by the local government from the bond owners to the state.

(c) The local government must repay to the state the money so transferred by the state treasurer as provided in this chapter, by rules adopted by the state finance committee, and any terms and conditions set forth by the state treasurer upon the issuance of the guarantee.

NEW SECTION. **Sec.**  (1) Any local government that has issued guaranteed bonds for which the state has made all or part of a debt service payment must:

(a) Reimburse all money drawn by the state treasurer on its behalf in accordance with this chapter, rules set forth by the state finance committee, and any terms and conditions set forth by the state treasurer;

(b) Pay interest to the state on all money paid by the state from the date that money was drawn to the date the state is repaid, at a rate to be determined in accordance with a rule adopted by the state finance committee, and any terms and conditions set forth by the state treasurer; and

(c) Pay all fees and charges required by this chapter.

(2)(a)(i) If the state treasurer determines that reimbursement amounts paid by a local government under subsection (1) of this section will not reimburse the state in full within one year from the state's payment of a local government's scheduled debt service payment, the state treasurer may pursue any legal action, including mandamus, against the local government to compel it to meet its repayment obligations to the state.

(ii) In pursuing its rights under (a)(i) of this subsection, the state shall have the same substantive and procedural rights as would an owner of a guaranteed bond. If and to the extent that the state has made payments to the owners of guaranteed bonds under section 204 of this act and has not been reimbursed by the local government, the state is subrogated to the rights of those guaranteed bond holders.

(b) The local government shall pay the fees, expenses, and costs incurred by the state in recovering amounts paid under the guarantee authorized by this chapter.

NEW SECTION. **Sec.**  If the state treasurer determines that a local government will be unable to meet its debt service obligations on guaranteed bonds on an ongoing basis, the legislature must make specific appropriations sufficient to meet the debt service obligations required to be paid pursuant to the guarantee provided for in this chapter or an amount sufficient to defease the bonds.

NEW SECTION. **Sec.**  To effect the provisions of Article VIII, section 1(m) of the state Constitution, Senate Joint Resolution No. 8204, the legislature shall make provision for such amounts as may be required to make timely payments under the credit enhancement program under this chapter in each and every biennial appropriations act.

NEW SECTION. **Sec.**  The state finance committee may adopt, under chapter 34.05 RCW, all rules necessary and appropriate for the implementation and administration of this chapter.

NEW SECTION. **Sec.**  If the state finance committee deems it appropriate, it may establish rules for pooling essential infrastructure projects for the sole purpose of financing.

**PART III**

**PUBLIC WORKS BOARD PROVISIONS**

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

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

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

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

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

(4) "Essential public infrastructure projects" has the same meaning as in section 201 of this act.

(5) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

((~~(5)~~)) (6) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts ((~~and port districts~~)).

((~~(6)~~)) (7) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities. A planning project may include the compilation of biological, hydrological, or other data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.

((~~(7)~~)) (8) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

((~~(8)~~)) (9) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.

**Sec.**  RCW 43.155.040 and 1985 c 446 s 10 are each amended to read as follows:

The board may:

(1) Accept from any state or federal agency, loans or grants for the planning or financing of any public works project and enter into agreements with any such agency concerning the loans or grants;

(2) Provide technical assistance to local governments;

(3) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(4) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter;

(5) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter;

(6) Review and approve essential public infrastructure projects under the provisions of section 304 of this act.

**Sec.**  RCW 43.155.050 and 2013 2nd sp.s. c 4 s 983 are each amended to read as follows:

The public works assistance account is hereby established in the state treasury. ((~~Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source.~~)) Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated or transferred to the water pollution control revolving account and the drinking water assistance account to provide for state match requirements under federal law ((~~for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated~~)). Money in the account may also be appropriated for the administration of the essential public infrastructure project program established in section 304 of this act and to offset or reduce fees charged by the state treasurer to administer the program and issue bonds under the program. Money in the account may also be appropriated for preconstruction loans((~~,~~)) and emergency loans((~~, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. During the 2011-2013 and 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund, the water pollution control revolving account, and the drinking water assistance account such amounts as reflect the excess fund balance of the account. During the 2011-2013 fiscal biennium, the legislature may appropriate moneys from the account for economic development, innovation, and export grants, including brownfields; main street improvement grants; and the loan program consolidation board. During the 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the education legacy trust account such amounts as specified by the legislature~~)).

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

(1) An essential public infrastructure project, as defined in section 201 of this act, is a capital project by an eligible local government that is necessary to:

(a) Provide safe and adequate drinking water;

(b) Collect, manage, and treat wastewater and storm water;

(c) Provide safe and efficient transportation, including public parking facilities, public transit facilities, and nonmotorized transportation;

(d) Provide or renovate facilities for safe and readily accessible recreation;

(e) Provide flood control and floodplain management facilities and improvements;

(f) Provide water supply improvements and water basin management enhancements, including culvert replacement projects to improve fish passage;

(g) Provide or renovate county or city criminal justice facilities;

(h) Provide or renovate fire protection or emergency medical services facilities;

(i) Provide industrial development facilities;

(j) Provide or renovate public library facilities.

(2) A local government that is eligible for financing assistance for essential public infrastructure projects, as defined in section 201 of this act, is one that can:

(a) Significantly benefit from the financing assistance under this section and under sections 201 through 207 of this act as determined by the public works board by considering the estimated net savings in financing cost achieved by this program and the relative ability of the local government and its taxpayers or ratepayers to pay for the project without the assistance of this program; and

(b) Meet the financial criteria established by the state finance committee.

(3) The board must adopt rules that establish the criteria for determining which local governments are eligible and what projects are necessary. The board must work with the state treasurer's office to determine the estimated amount and timing of financing assistance that can be provided annually to allow for a phase-in of this program based on interest and acceptance by the capital markets. The board must submit a prioritized and approved list of eligible essential public works projects within the estimated amounts to the state treasurer for a determination by the state treasurer as to whether the local government meets the financial criteria established by the state finance committee in order to assist those local governments that can most benefit from the assistance with projects that achieve the greatest community benefit.

**PART IV**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  This act takes effect January 1, 2016, if the proposed amendment to Article VIII, section 1 of the state Constitution, guaranteeing the obligation of debt for essential public infrastructure, is validly submitted to and is approved and ratified by voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety.

NEW SECTION. **Sec.**  Sections 201 through 210 of this act constitute a new chapter in Title 39 RCW.

**--- END ---**