
SENATE BILL 5624

State of Washington

64th Legislature

2015 Regular Session

By Senators Keiser, Honeyford, and Conway

Read first time 01/26/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to financing essential public infrastructure;
2 amending RCW 39.94.030, 43.155.020, 43.155.040, and 43.155.050;
3 reenacting and amending RCW 39.94.040; adding a new section to
4 chapter 43.155 RCW; adding a new chapter to Title 39 RCW; creating a
5 new section; and providing a contingent effective date.

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

7 **PART I**

8 **FINDINGS AND INTENT**

9 NEW SECTION. **Sec. 101.** The legislature finds that access to
10 low-cost financing from the municipal bond market for essential
11 public infrastructure is impaired for jurisdictions with infrequent
12 use of private market capital, or which need to borrow smaller
13 amounts that generate little competition among investors. Prior
14 efforts to finance essential public infrastructure projects with
15 state tax resources result in competition between those projects and
16 other essential demands on those state taxes. That competition has
17 eroded the reliability of the state tax funded public infrastructure
18 financing programs, creating uncertainty and delay in improving
19 public infrastructure. The legislature intends to improve access and
20 reliability to low-cost financing for essential public infrastructure

1 projects by providing credit enhancements and pooling access to
2 private market capital.

3 **PART II**

4 **STATE FINANCE COMMITTEE PROVISIONS**

5 NEW SECTION. **Sec. 201.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Bond" means any voted general obligation bond or revenue
9 bond issued by a local jurisdiction, holding a certificate issued
10 pursuant to this chapter for such a bond.

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

13 (3) "Essential public infrastructure project" or "project" means
14 a project approved by the public works board under the provisions of
15 section 304 of this act by a local jurisdiction determined eligible
16 by the state treasurer under the provisions of section 203 of this
17 act.

18 (4) "General obligation bond" means any bond, note, warrant,
19 certificate of indebtedness, or other obligation of a local
20 jurisdiction that constitutes an indebtedness within the meaning of
21 any applicable constitutional or statutory debt limitations.

22 (5) "Local jurisdiction" or "jurisdiction" means any political
23 subdivision existing now or later under the laws of the state.

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

26 (7) "Pooled bond" means a financing contract approved and issued
27 under the provisions of section 208 of this act.

28 (8) "Public works board" or "board" means the public works board
29 or its successor organization established in RCW 43.155.030.

30 (9) "Refunding bond" means any general obligation or revenue bond
31 issued by a district for the purpose of refunding its outstanding
32 general obligation or revenue bonds.

33 NEW SECTION. **Sec. 202.** (1)(a) The full faith, credit, and
34 taxing power of the state is pledged to guarantee full and timely
35 payment of the principal of and interest on bonds or pooled bonds for
36 essential public infrastructure projects as such payments become due.
37 However, in the event of any acceleration of the due date of the

1 principal by reason of mandatory redemption or acceleration resulting
2 from default, the payments guaranteed shall be made in the amounts
3 and at the times as payments of principal would have been due had
4 there not been any acceleration.

5 (b) This guaranty does not extend to the payment of any
6 redemption premium.

7 (c) Reference to this chapter by its title on the face of any
8 bond or pooled bond conclusively establishes the guaranty provided to
9 that bond under the provisions of this chapter.

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

18 (b) Each jurisdiction may refer to this pledge and undertaking by
19 the state in its bonds.

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

22 NEW SECTION. **Sec. 203.** (1)(a) Any local jurisdiction, by
23 resolution of its legislative authority, may request that the state
24 treasurer issue a certificate evidencing the state's guaranty, under
25 this chapter, of its bonds for essential public infrastructure.

26 (b) After reviewing the request, if the state treasurer
27 determines that the local jurisdiction is eligible under rules
28 adopted by the state finance committee, and the project has been
29 approved by the public works board under provisions of section 304 of
30 this act, the state treasurer shall promptly issue the certificate as
31 to specific bonds of the local jurisdiction and provide it to the
32 requesting jurisdiction.

33 (c)(i) The local jurisdiction receiving the certificate and all
34 other persons may rely on the certificate as evidencing the guaranty
35 for bonds issued within one year from and after the date of the
36 certificate, without making further inquiry during that year.

37 (ii) The certificate of eligibility is valid for one year even if
38 the state treasurer later determines that the jurisdiction is
39 ineligible.

1 (2) Any jurisdiction that has bonds or that has received proceeds
2 from pooled bonds, the principal of or interest on which has been
3 paid, in whole or in part, by the state under this chapter, may not
4 issue any additional bonds guaranteed by this chapter until:

5 (a) All payment obligations of the jurisdiction to the state
6 under the credit enhancement program are satisfied; and

7 (b) The state treasurer and the public works board each certify
8 in writing, to be kept on file by the state treasurer and the public
9 works board, that the jurisdiction is fiscally solvent.

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

12 NEW SECTION. **Sec. 204.** (1)(a) The treasurer for each local
13 jurisdiction with outstanding, unpaid bonds or share of pooled bonds
14 shall transfer money sufficient for each scheduled debt service
15 payment to its paying agent or to the state treasurer on or before
16 any principal or interest payment date for the bonds or pooled bonds.

17 (b) A treasurer who is unable to transfer a scheduled debt
18 service payment to the paying agent or state treasurer on the
19 transfer date shall immediately notify the paying agent and the state
20 treasurer by:

21 (i) Telephone;

22 (ii) A writing sent by facsimile or electronic transmission; and

23 (iii) A writing sent by first-class United States mail.

24 (2) If sufficient funds are not transferred to the paying agent
25 as required by subsection (1) of this section, the paying agent shall
26 immediately notify the state treasurer of that failure by:

27 (a) Telephone;

28 (b) A writing sent by facsimile or electronic transmission; and

29 (c) A writing sent by first-class United States mail.

30 (3)(a) If sufficient money to pay the scheduled debt service
31 payment has not been so transferred to the paying agent or state
32 treasurer, the state treasurer shall, forthwith, transfer sufficient
33 money to the paying agent to make the scheduled debt service payment.

34 (b) The payment by the state treasurer:

35 (i) Discharges the obligation of the issuing local jurisdiction
36 to its bond owners for the payment, but does not retire any bond that
37 has matured. The terms of that bond remain in effect until the state
38 is repaid; and

1 (ii) Transfers the rights represented by the general obligation
2 of the local jurisdiction from the bond owners to the state.

3 (c) The local jurisdiction shall repay to the state the money so
4 transferred as provided in this chapter.

5 NEW SECTION. **Sec. 205.** (1) Any local jurisdiction that has
6 issued bonds or has received proceeds from pooled bonds for which the
7 state has made all or part of a debt service payment shall:

8 (a) Reimburse all money drawn by the state treasurer on its
9 behalf;

10 (b) Pay interest to the state on all money paid by the state from
11 the date that money was drawn to the date the state is repaid at a
12 rate to be prescribed by rule by the state finance committee; and

13 (c) Pay all penalties required by this chapter.

14 (2)(a) The state treasurer shall establish the reimbursement
15 interest rate after considering the circumstances of any prior draws
16 by the district on the state, market interest and penalty rates, and
17 the cost of funds or opportunity cost of investments, if any, that
18 were required to be borrowed or liquidated by the state to make
19 payment on the bonds.

20 (b) The state treasurer may, after considering the circumstances
21 giving rise to the failure of the local jurisdiction to make payment
22 on its bonds in a timely manner, impose on the jurisdiction a penalty
23 of not more than five percent of the amount paid by the state
24 pursuant to its guaranty for each instance in which a payment by the
25 state is made.

26 (3)(a)(i) If the state treasurer determines that amounts obtained
27 under this chapter will not reimburse the state in full within one
28 year from the state's payment of a local jurisdiction's scheduled
29 debt service payment, the state treasurer may pursue any legal
30 action, including mandamus, against the jurisdiction to compel it to
31 meet its repayment obligations to the state.

32 (ii) In pursuing its rights under (a)(i) of this subsection, the
33 state shall have the same substantive and procedural rights as would
34 a holder of the bonds of a jurisdiction. If and to the extent that
35 the state has made payments to the holders of bonds or pooled bonds
36 of a jurisdiction under section 204 of this act and has not been
37 reimbursed by the district, the state shall be subrogated to the
38 rights of those bond holders.

1 (iii) The state treasurer may also direct the local jurisdiction
2 and the appropriate county officials to restructure and revise the
3 collection of taxes for the payment of bonds on which the state
4 treasurer has made payments under this chapter and, to the extent
5 permitted by law, may require that the proceeds of such taxes be
6 applied to the jurisdiction's obligations to the state if all
7 outstanding obligations of the jurisdiction payable from such taxes
8 are fully paid or their payment is fully provided for.

9 (b) The jurisdiction shall pay the fees, expenses, and costs
10 incurred by the state in recovering amounts paid under the guaranty
11 authorized by this chapter.

12 NEW SECTION. **Sec. 206.** In order to effect the provisions of
13 Article VIII, section 1(m) of the state Constitution, Senate Joint
14 Resolution No. (S-0672.1/15), the legislature shall make
15 provision for such amounts as may be required to make timely payments
16 under the essential public works bond guaranty program under this
17 chapter in each and every biennial appropriations act.

18 NEW SECTION. **Sec. 207.** The state finance committee may adopt,
19 under chapter 34.05 RCW, all rules necessary and appropriate for the
20 implementation and administration of this chapter.

21 **Sec. 208.** RCW 39.94.030 and 2010 c 115 s 2 are each amended to
22 read as follows:

23 (1) The state may enter into financing contracts for itself or on
24 behalf of an other agency for the use and acquisition for public
25 purposes of real and personal property. Payments under financing
26 contracts of the state shall be made by the state from currently
27 appropriated funds or funds not constituting "general state revenues"
28 as defined in Article VIII, section 1 of the state Constitution.
29 Except as provided in subsection (4)(b) of this section, payments
30 under financing contracts of the state on behalf of any other agency
31 shall be made solely from the sources identified in the financing
32 contract, which may not obligate general state revenues as defined in
33 Article VII, section 1 of the state Constitution. The treasurer of an
34 other agency shall remit payments under financing contracts to the
35 office of the state treasurer or to the state treasurer's designee.
36 In the event of any deficiency of payments by an other agency under a
37 financing contract, the treasurer of the other agency shall transfer

1 any legally available funds of the other agency in satisfaction of
2 the other agency's obligations under the financing contract if such
3 funds have been obligated by the other agency under the financing
4 contract and, if such deficiency is not thereby cured, the office of
5 the state treasurer is directed to withdraw from that agency's share
6 of state revenues for distribution or other money an amount
7 sufficient to fulfill the terms and conditions of the financing
8 contract. The term of any financing contract shall not exceed thirty
9 years or the remaining useful life of the property, whichever is
10 shorter. Financing contracts may include other terms and conditions
11 agreed upon by the parties.

12 (2) The state for itself or on behalf of an other agency may
13 enter into contracts for credit enhancement, which limits the
14 recourse of the provider of credit enhancement solely to the security
15 provided under the financing contract secured by the credit
16 enhancement.

17 (3) The state or an other agency may grant a security interest in
18 real or personal property acquired under financing contracts. The
19 security interest may be perfected as provided by the uniform
20 commercial code - secured transactions, or otherwise as provided by
21 law for perfecting liens on real estate. Other terms and conditions
22 may be included as agreed upon by the parties. An other agency that
23 is authorized by applicable law to enter into a financing contract
24 may make payments due under such a contract from the proceeds of
25 annual tax levies approved by the voters under RCW 84.52.056, among
26 other sources.

27 (4)(a) Financing contracts and contracts for credit enhancement
28 entered into under the limitations set forth in this chapter do not
29 constitute a debt or the contracting of indebtedness under any law
30 limiting debt of the state. It is the intent of the legislature that
31 such contracts also do not constitute a debt or the contracting of
32 indebtedness under Article VIII, section 1 of the state Constitution.
33 Certificates of participation in payments to be made under financing
34 contracts also do not constitute a debt or the contracting of an
35 indebtedness under any law limiting debt of the state if payment is
36 conditioned upon payment by the state under the financing contract
37 with respect to which the same relates. It is the intent of the
38 legislature that such certificates also do not constitute a debt or
39 the contracting of indebtedness under Article VIII, section 1 of the
40 state Constitution if payment of the certificates is conditioned upon

1 payment by the state under the financing contract with respect to
2 which those certificates relate.

3 (b) An other agency authorized by law to issue bonds, notes, or
4 other evidences of indebtedness or to enter into conditional sales
5 contracts or lease obligations, may participate in a program under
6 this chapter in which the state enters into a financing contract on
7 behalf of that other agency, and the other agency's obligations to
8 the state under the program may be evidenced by an agreement, lease,
9 bond, note, or other appropriate instrument. A financing contract
10 made by the state on behalf of an other agency may be secured by the
11 pledge of revenues of the other agency or other agency's full faith
12 and credit or may, at the option of the state finance committee,
13 include a contingent obligation by the state for payment under such
14 financing contract.

15 (5) A local jurisdiction or jurisdictions, as defined in section
16 201 of this act may participate in a pooled bond program for
17 financing essential public infrastructure as defined in section 201
18 of this act in which the state enters into a financing contract on
19 behalf of that jurisdiction or those jurisdictions, after:

20 (a) Review and approval by the public works board under section
21 304 of this act;

22 (b) Review and approval by the state treasurer under section 203
23 of this act;

24 (c) Execution of and an agreement between the local jurisdiction
25 and state treasurer secured by a pledge of revenue of the local
26 jurisdiction or the local jurisdiction's full faith, credit, and
27 taxing power.

28 **Sec. 209.** RCW 39.94.040 and 2011 1st sp.s. c 43 s 726 and 2011 c
29 151 s 7 are each reenacted and amended to read as follows:

30 (1) Except as provided in RCW 28B.10.022, the state may not enter
31 into any financing contract for itself if the aggregate principal
32 amount payable thereunder is greater than an amount to be established
33 from time to time by the state finance committee or participate in a
34 program providing for the issuance of certificates of participation,
35 including any contract for credit enhancement, without the prior
36 approval of the state finance committee. Except as provided in RCW
37 28B.10.022, the state finance committee shall approve the form of all
38 financing contracts or a standard format for all financing contracts.
39 The state finance committee also may:

1 (a) Consolidate existing or potential financing contracts into
2 master financing contracts with respect to property acquired by one
3 or more agencies, departments, instrumentalities of the state, the
4 state board for community and technical colleges, or a state
5 institution of higher learning; or to be acquired by another agency;

6 (b) Approve programs providing for the issuance of certificates
7 of participation in master financing contracts for the state or for
8 other agencies;

9 (c) Enter into agreements with trustees relating to master
10 financing contracts; and

11 (d) Make appropriate rules for the performance of its duties
12 under this chapter.

13 (2) In the performance of its duties under this chapter, the
14 state finance committee may consult with representatives from the
15 department of general administration, the office of financial
16 management, and the office of the chief information officer.

17 (3) With the approval of the state finance committee, the state
18 also may enter into agreements with trustees relating to financing
19 contracts and the issuance of certificates of participation.

20 (4) Except for financing contracts for real property used for the
21 purposes described under chapter 28B.140 RCW, or for essential public
22 infrastructure projects under chapter 39.--- RCW (the new chapter
23 created in section 402 of this act), the state may not enter into any
24 financing contract for real property of the state without prior
25 approval of the legislature. For the purposes of this requirement, a
26 financing contract must be treated as used for real property if it is
27 being entered into by the state for the acquisition of land; the
28 acquisition of an existing building; the construction of a new
29 building; or a major remodeling, renovation, rehabilitation, or
30 rebuilding of an existing building. Prior approval of the legislature
31 is not required under this chapter for a financing contract entered
32 into by the state under this chapter for energy conservation
33 improvements to existing buildings where such improvements include:
34 (a) Fixtures and equipment that are not part of a major remodeling,
35 renovation, rehabilitation, or rebuilding of the building, or (b)
36 other improvements to the building that are being performed for the
37 primary purpose of energy conservation. Such energy conservation
38 improvements must be determined eligible for financing under this
39 chapter by the office of financial management in accordance with

1 financing guidelines established by the state treasurer, and are to
2 be treated as personal property for the purposes of this chapter.

3 (5) The state may not enter into any financing contract on behalf
4 of another agency without the approval of such a financing contract
5 by the governing body of the other agency.

6 **PART III**

7 **PUBLIC WORKS BOARD PROVISIONS**

8 **Sec. 301.** RCW 43.155.020 and 2009 c 565 s 33 are each amended to
9 read as follows:

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

12 (1) "Board" means the public works board created in RCW
13 43.155.030.

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

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

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

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

26 ~~((+5))~~ (6) "Local governments" means cities, towns, counties,
27 special purpose districts, and any other municipal corporations or
28 quasi-municipal corporations in the state excluding school districts
29 and port districts.

30 ~~((+6))~~ (7) "Public works project" means a project of a local
31 government for the planning, acquisition, construction, repair,
32 reconstruction, replacement, rehabilitation, or improvement of
33 streets and roads, bridges, water systems, or storm and sanitary
34 sewage systems and solid waste facilities, including recycling
35 facilities. A planning project may include the compilation of
36 biological, hydrological, or other data on a county, drainage basin,
37 or region necessary to develop a base of information for a capital
38 facility plan.

1 ((+7)) (8) "Solid waste or recycling project" means remedial
2 actions necessary to bring abandoned or closed landfills into
3 compliance with regulatory requirements and the repair, restoration,
4 and replacement of existing solid waste transfer, recycling
5 facilities, and landfill projects limited to the opening of landfill
6 cells that are in existing and permitted landfills.

7 ((+8)) (9) "Technical assistance" means training and other
8 services provided to local governments to: (a) Help such local
9 governments plan, apply, and qualify for loans and financing
10 guarantees from the board, and (b) help local governments improve
11 their ability to plan for, finance, acquire, construct, repair,
12 replace, rehabilitate, and maintain public facilities.

13 **Sec. 302.** RCW 43.155.040 and 1985 c 446 s 10 are each amended to
14 read as follows:

15 The board may:

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

19 (2) Provide technical assistance to local governments;

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

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

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

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

29 **Sec. 303.** RCW 43.155.050 and 2013 2nd sp.s. c 4 s 983 are each
30 amended to read as follows:

31 The public works assistance account is hereby established in the
32 state treasury. ~~((Money may be placed in the public works assistance
33 account from the proceeds of bonds when authorized by the legislature
34 or from any other lawful source.))~~ Money in the public works
35 assistance account shall be used to make loans and to give financial
36 guarantees to local governments for public works projects. Moneys in
37 the account may also be appropriated or transferred to the water
38 pollution control revolving account and the drinking water assistance

1 account to provide for state match requirements under federal law
2 (~~for projects and activities conducted and financed by the board~~
3 ~~under the drinking water assistance account. Not more than fifteen~~
4 ~~percent of the biennial capital budget appropriation to the public~~
5 ~~works board from this account may be expended or obligated)). Money
6 in the account may also be appropriated for the administration of the
7 essential public infrastructure project program established in
8 section 304 of this act and to offset or reduce fees charged by the
9 state treasurer to administer the program and issue bonds under the
10 program. Money in the account may also be appropriated for
11 preconstruction loans((~~7~~)) and emergency loans((~~7~~, or loans for
12 capital facility planning under this chapter; of this amount, not
13 more than ten percent of the biennial capital budget appropriation
14 may be expended for emergency loans and not more than one percent of
15 the biennial capital budget appropriation may be expended for capital
16 facility planning loans. During the 2011-2013 and 2013-2015 fiscal
17 biennium, the legislature may transfer from the public works
18 assistance account to the general fund, the water pollution control
19 revolving account, and the drinking water assistance account such
20 amounts as reflect the excess fund balance of the account. During the
21 2011-2013 fiscal biennium, the legislature may appropriate moneys
22 from the account for economic development, innovation, and export
23 grants, including brownfields; main street improvement grants; and
24 the loan program consolidation board. During the 2013-2015 fiscal
25 biennium, the legislature may transfer from the public works
26 assistance account to the education legacy trust account such amounts
27 as specified by the legislature)).~~

28 NEW SECTION. Sec. 304. A new section is added to chapter 43.155
29 RCW to read as follows:

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

33 (a) Provide safe and adequate drinking water;

34 (b) Manage and treat wastewater and storm water;

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

38 (d) Provide safe and readily accessible recreation.

1 (2) An eligible local jurisdiction is any political subdivision
2 that can significantly benefit from the financing assistance under
3 chapter 39.--- RCW (the new chapter created in section 402 of this
4 act) and demonstrate its ability to repay its obligations.

5 (3) The board must adopt specific criteria to determine which
6 jurisdictions are eligible and what projects are necessary. The board
7 must work with the state treasurer's office to determine the
8 estimated amount and timing of financing assistance that can be
9 provided annually. The board must prioritize and approve essential
10 public works projects within the estimated amounts in order to assist
11 jurisdictions that can most benefit from the assistance for projects
12 that achieve the greatest community benefit. The board's approved
13 projects must be submitted to the state treasurer's office for review
14 of eligibility under the provisions of section 203 of this act. The
15 board may also approve amounts from within appropriations of the
16 public works assistance account to offset fees charged by the state
17 treasurer's office under section 203 of this act.

18 **PART IV**

19 **MISCELLANEOUS PROVISIONS**

20 NEW SECTION. **Sec. 401.** This act takes effect January 1, 2016,
21 if the proposed amendment to Article VIII, section 1 of the state
22 Constitution, guaranteeing the obligation of debt for essential
23 public infrastructure, is validly submitted to and is approved and
24 ratified by voters at the next general election. If the proposed
25 amendment is not approved and ratified, this act is void in its
26 entirety.

27 NEW SECTION. **Sec. 402.** Sections 201 through 207 of this act
28 constitute a new chapter in Title 39 RCW.

--- END ---