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HOUSE BILL 1959

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Dunshee, Riccelli, Walsh, DeBolt, MacEwen, and Ormsby; by request of Public Works Board

Read first time 02/04/15. Referred to Committee on Capital Budget.

1 AN ACT Relating to public works; amending RCW 43.155.030,  
2 43.155.060, 43.155.065, 43.155.068, and 43.155.070; and adding new  
3 sections to chapter 43.155 RCW.

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

5 **Sec. 1.** RCW 43.155.030 and 1999 c 153 s 58 are each amended to  
6 read as follows:

7 (1) The public works board is hereby created.

8 (2) The board shall be composed of (~~thirteen~~) seventeen members  
9 appointed by the governor for terms of four years, except that five  
10 members initially shall be appointed for terms of two years. The  
11 board shall include: (a) Three members, two of whom shall be elected  
12 officials and one shall be a public works manager, appointed from a  
13 list of at least six persons nominated by the association of  
14 Washington cities or its successor; (b) three members, two of whom  
15 shall be elected officials and one shall be a public works manager,  
16 appointed from a list of at least six persons nominated by the  
17 Washington state association of counties or its successor; (c) three  
18 members appointed from a list of at least six persons nominated  
19 jointly by the Washington public utility districts association and a  
20 state association of water-sewer districts, or their successors; (d)  
21 one member from each of the two major caucuses of the house of

1 representatives to be appointed by the speaker of the house of  
2 representatives and one member from each of the two major caucuses of  
3 the senate to be appointed by the president of the senate: (i) Each  
4 member of the house of representatives who is appointed to the public  
5 works board under this chapter may designate another member from the  
6 house of representatives to take his or her place on the board for  
7 meetings at which the member will be absent, as long as the  
8 designated member belongs to the same caucus; the designee shall have  
9 all powers to vote and participate in board deliberations as have the  
10 other board members; (ii) each member of the senate who is appointed  
11 to the public works board under this chapter may designate another  
12 member from the senate to take his or her place on the board for  
13 meetings at which the member will be absent, as long as the  
14 designated member belongs to the same caucus; (iii) the designee  
15 shall have all powers to vote and participate in board deliberations  
16 as have the other board members; and ((+d)) (e) four members  
17 appointed from the general public. In appointing the four general  
18 public members, the governor shall endeavor to balance the  
19 geographical composition of the board and to include members with  
20 special expertise in relevant fields such as public finance,  
21 architecture and civil engineering, and public works construction.  
22 The governor shall appoint one of the general public members of the  
23 board as chair. The term of the chair shall coincide with the term of  
24 the governor.

25 (3) Staff support to the board shall be provided by the  
26 department.

27 (4) Members of the board shall receive no compensation but shall  
28 be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

29 (5) If a vacancy on the board occurs by death, resignation, or  
30 otherwise, the governor shall fill the vacant position for the  
31 unexpired term. Each vacancy in a position appointed from lists  
32 provided by the associations under subsection (2) of this section  
33 shall be filled from a list of at least three persons nominated by  
34 the relevant association or associations. Any members of the board,  
35 appointive or otherwise, may be removed by the governor for cause in  
36 accordance with RCW 43.06.070 and 43.06.080.

37 **Sec. 2.** RCW 43.155.060 and 1988 c 93 s 2 are each amended to  
38 read as follows:

1       (1) The legislature finds that while local governments are  
2 responsible for creating and maintaining local infrastructure  
3 systems, state priority policy objectives are served by investing  
4 financial and technical resources in these systems. The public works  
5 assistance account was created to strategically invest public funds  
6 as a priority policy objective.

7       (2) The board must establish policies and procedures designed to  
8 manage the public works assistance account in such a way as to ensure  
9 sustainability of the account. In order to aid the financing of  
10 public works projects, the board may:

11       ~~((1))~~ (a) Make ~~((low-interest or interest-free))~~ loans to local  
12 governments from the public works assistance account or other funds  
13 and accounts for the purpose of assisting local governments in  
14 financing public works projects. ~~((The board may require such terms~~  
15 and conditions and may charge such rates of interest on its loans as  
16 it deems necessary or convenient to carry out the purposes of this  
17 chapter.)) When establishing loans interest rates for loan programs  
18 authorized under this statute, the board must take into consideration  
19 the following in any order: (i) The average daily market interest  
20 rate for tax-exempt municipal bonds as published in the bond buyer's  
21 index for the three-month period prior to the loan cycle; (ii) the  
22 length of the loan repayment period; (iii) for construction loans,  
23 the life of the asset being constructed; (iv) whether or not the loan  
24 applicant is experiencing financial hardship as measured by the  
25 affordability index, or other similar standard measure of financial  
26 hardship; and (v) whether or not the loan applicant has a bond rating  
27 at time of application. Money received from local governments in  
28 repayment of loans made under this section shall be paid into the  
29 public works assistance account for uses consistent with this  
30 chapter.

31       ~~((2))~~ (b) Pledge money in the public works assistance account,  
32 or money to be received by the public works assistance account, to  
33 the repayment of all or a portion of the principal of or interest on  
34 obligations issued by local governments to finance public works  
35 projects. The board shall not pledge any amount greater than the sum  
36 of money in the public works assistance account plus money to be  
37 received from the payment of the debt service on loans made from that  
38 account, nor shall the board pledge the faith and credit or the  
39 taxing power of the state or any agency or subdivision thereof to the  
40 repayment of obligations issued by any local government.

1       (~~(3)~~) (c) Create such subaccounts in the public works  
2 assistance account as the board deems necessary to carry out the  
3 purposes of this chapter.

4       (~~(4)~~) (d) Provide a method for the allocation of loans and  
5 financing guarantees and the provision of technical assistance under  
6 this chapter.

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

15       **Sec. 3.** RCW 43.155.065 and 2001 c 131 s 3 are each amended to  
16 read as follows:

17       The board may make (~~(low-interest or interest-free)~~) loans to  
18 local governments for emergency public works projects. Emergency  
19 public works projects shall include the construction, repair,  
20 reconstruction, replacement, rehabilitation, or improvement of a  
21 public water system that is in violation of health and safety  
22 standards and is being operated by a local government on a temporary  
23 basis. The loans may be used to help fund all or part of an emergency  
24 public works project less any reimbursement from any of the following  
25 sources: (1) Federal disaster or emergency funds, including funds  
26 from the federal emergency management agency; (2) state disaster or  
27 emergency funds; (3) insurance settlements; or (4) litigation.

28       **Sec. 4.** RCW 43.155.068 and 2001 c 131 s 4 are each amended to  
29 read as follows:

30       (1) The board may make (~~(low-interest or interest-free)~~) loans to  
31 local governments for preconstruction activities on public works  
32 projects before the legislature approves the construction phase of  
33 the project. Preconstruction activities include design, engineering,  
34 bid-document preparation, environmental studies, right-of-way  
35 acquisition, and other preliminary phases of public works projects as  
36 determined by the board. The purpose of the loans authorized in this  
37 section is to accelerate the completion of public works projects by

1 allowing preconstruction activities to be performed before the  
2 approval of the construction phase of the project by the legislature.

3 (2) Projects receiving loans for preconstruction activities under  
4 this section must be evaluated using the priority process and factors  
5 in RCW 43.155.070(~~((+2))~~) (4). The receipt of a loan for  
6 preconstruction activities does not ensure the receipt of a  
7 construction loan for the project under this chapter. Construction  
8 loans for projects receiving a loan for preconstruction activities  
9 under this section are subject to legislative approval under RCW  
10 43.155.070 (~~((+4))~~) (7) and (~~((+5))~~) (8). The board shall adopt a  
11 single application process for local governments seeking both a loan  
12 for preconstruction activities under this section and a construction  
13 loan for the project.

14 **Sec. 5.** RCW 43.155.070 and 2013 2nd sp.s. c 19 s 7032 are each  
15 amended to read as follows:

16 (1) To qualify for financial assistance under this chapter the  
17 board must determine that a local government meets all of the  
18 following conditions:

19 (a) The city or county must be imposing a tax under chapter 82.46  
20 RCW at a rate of at least one-quarter of one percent;

21 (b) The local government must have developed a capital facility  
22 plan; and

23 (c) The local government must be using all local revenue sources  
24 which are reasonably available for funding public works, taking into  
25 consideration local employment and economic factors.

26 (2) Except where necessary to address a public health need or  
27 substantial environmental degradation, a county, city, or town  
28 planning under RCW 36.70A.040 may not receive financial assistance  
29 under this chapter unless it has adopted a comprehensive plan,  
30 including a capital facilities plan element, and development  
31 regulations as required by RCW 36.70A.040. This subsection does not  
32 require any county, city, or town planning under RCW 36.70A.040 to  
33 adopt a comprehensive plan or development regulations before  
34 requesting or receiving financial assistance under this chapter if  
35 such request is made before the expiration of the time periods  
36 specified in RCW 36.70A.040. A county, city, or town planning under  
37 RCW 36.70A.040 that has not adopted a comprehensive plan and  
38 development regulations within the time periods specified in RCW  
39 36.70A.040 may apply for and receive financial assistance under this

1 chapter if the comprehensive plan and development regulations are  
2 adopted as required by RCW 36.70A.040 before executing a contractual  
3 agreement for financial assistance with the board.

4 (3) In considering awarding financial assistance for public  
5 facilities to special districts requesting funding for a proposed  
6 facility located in a county, city, or town planning under RCW  
7 36.70A.040, the board must consider whether the county, city, or town  
8 planning under RCW 36.70A.040 in whose planning jurisdiction the  
9 proposed facility is located has adopted a comprehensive plan and  
10 development regulations as required by RCW 36.70A.040.

11 (4) The board must develop a priority process for numerically  
12 ranking public works projects as provided in this section. The intent  
13 of the numerically ranked priority process is to maximize the value  
14 of public works projects accomplished with assistance under this  
15 chapter. The board must attempt to assure a geographical balance in  
16 assigning ((priorities)) numerical ranking to projects. The board  
17 must consider at least the following factors in assigning a priority  
18 to a project:

19 (a) Whether the local government receiving assistance has  
20 experienced severe fiscal distress resulting from natural disaster or  
21 emergency public works needs;

22 (b) Except as otherwise conditioned by RCW 43.155.110, whether  
23 the entity receiving assistance is a Puget Sound partner, as defined  
24 in RCW 90.71.010;

25 (c) Whether the project is referenced in the action agenda  
26 developed by the Puget Sound partnership under RCW 90.71.310;

27 (d) Whether the project is critical in nature and would affect  
28 the health and safety of a great number of citizens;

29 (e) Whether the applicant's permitting process has been certified  
30 as streamlined by the office of regulatory assistance;

31 (f) Whether the applicant has developed and adhered to guidelines  
32 regarding its permitting process for those applying for development  
33 permits consistent with section 1(2), chapter 231, Laws of 2007;

34 (g) The cost of the project compared to the size of the local  
35 government and amount of loan money available;

36 (h) The number of communities served by or funding the project;

37 (i) Whether the project is located in an area of high  
38 unemployment, compared to the average state unemployment;

39 (j) Whether the project is the acquisition, expansion,  
40 improvement, or renovation by a local government of a public water

1 system that is in violation of health and safety standards, including  
2 the cost of extending existing service to such a system;

3 (k) Except as otherwise conditioned by RCW 43.155.120, and  
4 effective one calendar year following the development of model  
5 evergreen community management plans and ordinances under RCW  
6 35.105.050, whether the entity receiving assistance has been  
7 recognized, and what gradation of recognition was received, in the  
8 evergreen community recognition program created in RCW 35.105.030;

9 (l) The relative benefit of the project to the community,  
10 considering the present level of economic activity in the community  
11 and the existing local capacity to increase local economic activity  
12 in communities that have low economic growth; and

13 (m) Other criteria that the board considers advisable.

14 (5) For the 2013-2015 fiscal biennium, in place of the criteria,  
15 ranking, and submission processes for construction loan lists  
16 provided in subsections (4) and (~~(+7)~~) (8) of this section:

17 (a) The board must develop a process for numerically ranking  
18 applications for construction loans submitted by local governments.  
19 The board must consider, at a minimum and in any order, the following  
20 factors in assigning a numerical ranking to a project:

21 (i) Whether the project is critical in nature and would affect  
22 the health and safety of many people;

23 (ii) The extent to which the project leverages nonstate funds;

24 (iii) The extent to which the project is ready to proceed to  
25 construction;

26 (iv) Whether the project is located in an area of high  
27 unemployment, compared to the average state unemployment;

28 (v) Whether the project promotes the sustainable use of resources  
29 and environmental quality;

30 (vi) Whether the project consolidates or regionalizes systems;

31 (vii) Whether the project encourages economic development through  
32 mixed-use and mixed income development consistent with chapter 36.70A  
33 RCW;

34 (viii) Whether the system is being well-managed in the present  
35 and for long-term sustainability;

36 (ix) Achieving equitable distribution of funds by geography and  
37 population;

38 (x) The extent to which the project meets the following state  
39 policy objectives:

40 (A) Efficient use of state resources;

- 1 (B) Preservation and enhancement of health and safety;
- 2 (C) Abatement of pollution and protection of the environment;
- 3 (D) Creation of new, family wage jobs, and avoidance of shifting
- 4 existing jobs from one Washington state community to another;
- 5 (E) Fostering economic development consistent with chapter 36.70A
- 6 RCW;
- 7 (F) Efficiency in delivery of goods and services, public transit,
- 8 and transportation;
- 9 (G) Avoidance of additional costs to state and local governments
- 10 that adversely impact local residents and small businesses; and
- 11 (H) Reduction of the overall cost of public infrastructure; and
- 12 (xi) Other criteria that the board considers necessary to achieve
- 13 the purposes of this chapter.

14 (b) Before November 1, 2014, the board must develop and submit to

15 the appropriate fiscal committees of the senate and house of

16 representatives a ranked list of qualified public works projects

17 which have been evaluated by the board and are recommended for

18 funding by the legislature. The maximum amount of funding that the

19 board may recommend for any jurisdiction is ten million dollars per

20 biennium. For each project on the ranked list, as well as for

21 eligible projects not recommended for funding, the board must

22 document the numerical ranking that was assigned.

23 (6) Existing debt or financial obligations of local governments

24 may not be refinanced under this chapter. Each local government

25 applicant must provide documentation of attempts to secure additional

26 local or other sources of funding for each public works project for

27 which financial assistance is sought under this chapter.

28 (7) The board must implement policies and procedures designed to

29 maximize local government use of federal funds to finance local

30 infrastructure projects.

31 (8) Before November 1st of each even-numbered year, the board

32 must develop and submit to the appropriate fiscal committees of the

33 senate and house of representatives a description of the loans made

34 under RCW 43.155.065, 43.155.068, and subsection (~~((10))~~) (11) of

35 this section during the preceding fiscal year and a prioritized list

36 of projects which are recommended for funding by the legislature,

37 including one copy to the staff of each of the committees. The list

38 must include, but not be limited to, a description of each project

39 and recommended financing, the terms and conditions of the loan or

40 financial guarantee, the local government jurisdiction and

1 unemployment rate, demonstration of the jurisdiction's critical need  
2 for the project and documentation of local funds being used to  
3 finance the public works project. The list must also include measures  
4 of fiscal capacity for each jurisdiction recommended for financial  
5 assistance, compared to authorized limits and state averages,  
6 including local government sales taxes; real estate excise taxes;  
7 property taxes; and charges for or taxes on sewerage, water, garbage,  
8 and other utilities.

9 ~~((+8))~~ (9) The board may not sign contracts or otherwise  
10 financially obligate funds from the public works assistance account  
11 before the legislature has appropriated funds for a specific list of  
12 public works projects. The legislature may remove projects from the  
13 list recommended by the board. The legislature may not change the  
14 order of the priorities recommended for funding by the board.

15 ~~((+9))~~ (10) Subsection ~~((+8))~~ (9) of this section does not  
16 apply to loans made under RCW 43.155.065, 43.155.068, and subsection  
17 ~~((+10))~~ (11) of this section.

18 ~~((+10))~~ (11) Loans made for the purpose of capital facilities  
19 plans are exempted from subsection ~~((+8))~~ (9) of this section.

20 ~~((+11))~~ (12) To qualify for loans or pledges for solid waste or  
21 recycling facilities under this chapter, a city or county must  
22 demonstrate that the solid waste or recycling facility is consistent  
23 with and necessary to implement the comprehensive solid waste  
24 management plan adopted by the city or county under chapter 70.95  
25 RCW.

26 ~~((+12))~~ (13) After January 1, 2010, any project designed to  
27 address the effects of storm water or wastewater on Puget Sound may  
28 be funded under this section only if the project is not in conflict  
29 with the action agenda developed by the Puget Sound partnership under  
30 RCW 90.71.310.

31 ~~((+13))~~ (14) During the 2013-2015 fiscal biennium, for projects  
32 involving repair, replacement, or improvement of a wastewater  
33 treatment plant or other public works facility for which an  
34 investment grade efficiency audit is obtainable, the public works  
35 board must require as a contract condition that the project sponsor  
36 undertake an investment grade efficiency audit. The project sponsor  
37 may finance the costs of the audit as part of its public works  
38 assistance account program loan.

39 ~~((+14))~~ (15)(a) For public works assistance account application  
40 rounds conducted during the 2013-2015 fiscal biennium, the board must

1 implement policies and procedures designed to maximize local  
2 government use of federally funded drinking water and clean water  
3 state revolving funds operated by the state departments of health and  
4 ecology. The board, department of ecology, and department of health  
5 must jointly develop evaluation criteria and application procedures  
6 that will increase access of eligible drinking water and wastewater  
7 projects to the public works assistance account for short-term  
8 preconstruction financing and to the federally funded state revolving  
9 funds for construction financing. The procedures must also strengthen  
10 coordinated funding of preconstruction and construction projects.

11 (b) For all construction loan projects proposed to the  
12 legislature for funding during the 2013-2015 fiscal biennium, the  
13 board must base interest rates on the average daily market interest  
14 rate for tax-exempt municipal bonds as published in the bond buyer's  
15 index for the period from sixty to thirty days before the start of  
16 the application cycle. For projects with a repayment period between  
17 five and twenty years, the rate must be sixty percent of the market  
18 rate. For projects with a repayment period under five years, the rate  
19 must be thirty percent of the market rate. The board must also  
20 provide reduced interest rates, extended repayment periods, or  
21 forgivable principal loans for projects that meet financial hardship  
22 criteria as measured by the affordability index or similar standard  
23 measure of financial hardship.

24 (c) By December 1, 2013, the board must recommend to the  
25 appropriate committees of the legislature statutory language to make  
26 permanent these new criteria, procedures, and financing policies.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.155  
28 RCW to read as follows:

29 All preconstruction and construction loans that fund projects  
30 involving repair, replacement, or improvement of a wastewater  
31 treatment plant or other public works facility for which an  
32 investment grade efficiency audit is obtainable, must include a  
33 condition that the loan recipient undertake an investment grade  
34 efficiency audit. The loan recipient may finance the costs of the  
35 audit as part of the loan.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.155  
37 RCW to read as follows:

1        Every four years, the board shall, in collaboration with other  
2 federal and state organizations, advocate groups, and other  
3 stakeholders associated with infrastructure, provide the governor and  
4 the appropriate committees of the legislature with a comprehensive  
5 assessment of local infrastructure needs and potential resources  
6 within the state to meet those needs.

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