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**SENATE BILL 5684**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Palumbo and Wilson

AN ACT Relating to creating the higher education infrastructure investment program; reenacting and amending RCW 43.79A.040; and adding a new chapter to Title 28B RCW.

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

NEW SECTION. **Sec.**  The legislature finds that new investments in higher education infrastructure are necessary to support a workforce that aligns with the Washington job market. Despite increases in degree production, there remain acute shortages in high-demand programs of study.

It is the intent of the legislature to provide jobs and opportunity by making Washington the place where the world's most productive companies find the world's most talented people. The legislature intends to accomplish this by entering into a public-private partnership with Washington employers to leverage state spending on capital projects in high-demand fields. The aim is to increase the capacity of higher education institutions to provide baccalaureate degrees and other programs in high employer demand areas to meet market demands for a knowledge-based economy while filling middle-income jobs with a sufficient supply of skilled workers.

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

(1) "Account" means the higher education infrastructure investment match account created in section 10 of this act.

(2) "Board" means the higher education infrastructure investment board created in section 3 of this act.

(3) "Contribution agreement" means any agreement authorized under this chapter in which a private entity agrees to provide grants and contributions for the purpose of financing infrastructure projects.

(4) "Council" means the student achievement council.

(5) "Fund" means the higher education infrastructure investment fund created in section 6 of this act.

(6) "Higher education infrastructure investment project" means a capital project contained on the prioritized lists submitted by the council to the office of financial management pursuant to RCW 28B.77.070 that benefit high-demand programs of study.

(7) "Program" means the higher education infrastructure investment program created in section 5 of this act.

(8) "Program administrator" means a person or entity managing grants and soliciting donations for the higher education infrastructure investment program.

NEW SECTION. **Sec.**  (1) The higher education infrastructure investment board is created. The board consists of eleven members appointed by the governor:

(a) Five members must be appointed from foundations or businesses engaged in the industry sectors of aerospace, manufacturing, health care, information technology, engineering, agriculture, or maritime. Once grants, donations, and contributions from private sources have been received in the fund, the governor shall appoint the foundation and business members from a list of nominations from the sources of those funds. However, the governor may request, and the private sector donors shall provide, an additional list or lists from which the governor shall select these members.

(b) Of the remaining six members, the governor must consider appointing three members from lists provided by the speaker of the house of representatives and the majority and minority leaders of the senate.

(c) The governor must make initial appointments to the board no later than January 1, 2018.

(2) The term of a member is four years from the date of his or her appointment except the initial term of two members appointed under subsection (1)(a) of this section and three members appointed under subsection (1)(b) of this section must be two years to create a staggered appointment process. A member may be appointed to not more than two full consecutive terms. A member appointed by the governor may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The members may not be compensated but may be reimbursed, solely from the fund, for expenses incurred in the discharge of their duties under this chapter.

(3) Seven members of the board constitute a quorum.

(4) The members of the board shall elect one of the business and industry representatives to serve as the chair. There may be other officers as the members determine necessary, and the board may adopt bylaws or rules for its own government.

(5) If a vacancy occurs, the governor shall fill the vacancy for the remainder of the term of the board member whose position has become vacant. If the vacancy by resignation or expiration of term is a member who was selected from the lists provided by the speaker of the house of representatives and the president of the senate, the governor must solicit new lists from the speaker and president for consideration in filling the vacancy.

(6) Meetings of the board must be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the members so requests. Meetings of the board may be held at any location within or out of the state, and members may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200.

(7) The purpose of the board is to provide oversight and guidance for the program in light of established legislative priorities and to fulfill the duties and responsibilities under this chapter including, but not limited to, soliciting project proposals and funds and setting annual fundraising goals.

(8) The board has all of the general powers necessary to carry out its purposes and duties including those powers reasonably required to implement the purposes of this chapter.

NEW SECTION. **Sec.**  (1) Any person appointed to serve as an appointee to the higher education infrastructure investment board is subject to senate confirmation.

(2) Any appointee subject to senate confirmation shall continue to serve unless rejected by a vote of the senate. An appointee who is rejected by a vote of the senate shall not be reappointed to the same position for a period of one year from termination of service.

(3) For the appointment of a board member to be effective, the governor must transmit to the secretary of the senate notice of the appointment, along with pertinent information regarding the appointee.

NEW SECTION. **Sec.**  (1) The higher education infrastructure investment program is established.

(2) The purpose of the program is to leverage state spending on capital projects in high-demand fields of study, in partnership with Washington employers.

(3) The board shall select institutions of higher education to receive higher education infrastructure investment awards. In so doing, the board must:

(a) Solicit, receive, and evaluate higher education infrastructure project proposals;

(b) Develop criteria for evaluating proposals and awarding funds to the proposals deemed most likely to increase the number of baccalaureate degrees;

(c) Give priority to proposals that include a partnership between public and private partnership entities that leverage additional private funds;

(d) Give priority to proposals that are innovative, efficient, and cost-effective, given the nature and cost of the particular program of study;

(e) Consult with and solicit input from higher education stakeholders including, but not limited to, organizations representing institution faculty, labor, student organizations, and relevant higher education agencies; and

(f) Determine which proposals will improve and accelerate the production of baccalaureate degrees, applied baccalaureate degrees, applied associate degrees, and certificates in workforce training.

(4) Institutions of higher education receiving awards under this section may not supplant existing general fund state revenues with higher education infrastructure investment awards.

(5) The board must develop a plan for the allocation of projected amounts in the fund, which it must update annually, following at least one annual public hearing. The plan must provide for appropriate funding continuity and take into account the projected speed at which revenues will be available and amounts that can be spent during the plan period.

(6) Annually, the council must report to the board, the governor, and the relevant committees of the legislature regarding the increase in the number of degrees in high employer demand and other programs of study awarded by institutions of higher education over the average of the preceding ten academic years.

(7) The source of funds for the program shall be grants and contributions from private sources and state matching funds.

NEW SECTION. **Sec.**  (1) The board shall be staffed by the program administrator. The program administrator, under contract with the board, shall staff the board and shall have the duties and responsibilities provided in this chapter including, but not limited to, publicizing the program, soliciting project proposals, and achieving the maximum possible rate of return on investment of the account, while ensuring transparency in the investment decisions and processes. Duties exercised jointly with the board include, but are not limited to, soliciting project proposals and funds and setting annual fundraising goals. The program administrator shall be paid an administrative fee as determined by the board.

(2) With respect to the program, the program administrator shall:

(a) Establish and manage the higher education infrastructure investment fund in an account outside the state treasury into which to receive grants, donations, and contributions from private sources as well as state matching funds, and from which to disburse funds;

(b) Solicit and accept grants and contributions from private sources, via direct payment, pledge agreement, or escrow account, of private sources for deposit into the account;

(c) Provide proof of receipt of grants and contributions from private sources to the board, identifying the amounts received by name of private source and date;

(d) In consultation with the board and the state board for community and technical colleges, make an assessment of the reasonable annual eligible expenses associated with eligible investments identified by the board;

(e) Develop and implement an application, selection, and notification process for evaluating proposals and making awards; and

(f) Distribute funds to selected higher education infrastructure projects through grant agreements. Grant agreements must set forth the terms and conditions of the grant and must include, but not be limited to: (i) Deliverables to be provided by the recipient pursuant to the grant; (ii) the circumstances under which the grant amount would be required to be repaid or the circumstances where commercialization-related revenue would be required to be shared; (iii) indemnification, dispute resolution, and any other terms and conditions as are customary for grant agreements or are deemed reasonable by the board; and (iv) the name or naming rights for any building will be decided by the board.

(3) With respect to the program, the program administrator shall:

(a) Assist the board in developing and implementing an application, selection, and notification process for making higher education infrastructure investment awards;

(b) Solicit and accept grants and contributions from private sources for awards; and

(c) Ensure that the program's administrative costs are one percent of revenues or less.

NEW SECTION. **Sec.**  (1) Annually each December 1st, the board, together with the program administrator, shall report to the governor and the appropriate committees of the legislature regarding the program including, but not limited to:

(a) Which proposals the board determined were eligible for purposes of the program;

(b) The number, amount, and identification of the higher education infrastructure investment projects receiving awards;

(c) The institutions and eligible education programs that received higher education infrastructure investment awards; and

(d) The total amount of grants and contributions from private sources and state match moneys received for the program, the interest or other earnings on the accounts, and the amount of any administrative fee paid to the program administrator.

(2) In the next succeeding legislative session following receipt of a report required under subsection (1) of this section, the appropriate committees of the legislature shall review the report and consider whether any legislative action is necessary with respect to the program including, but not limited to, consideration of whether any legislative action is necessary with respect to the nature and level of focus on high employer demand fields.

NEW SECTION. **Sec.**  The joint legislative audit and review committee shall evaluate the program and submit a report to the appropriate committees of the legislature by December 1, 2024. The committee's evaluation shall include, but not be limited to:

(1) The number and type of eligible proposals as determined by the board;

(2) The institutions and eligible education programs that received higher education infrastructure investment awards;

(3) The amount of grants and contributions from private sources to the program, annually and in total;

(4) The amount of state match moneys to the program, annually and in total;

(5) The amount of any administrative fees paid to the program administrator, annually and in total;

(6) The source and amount of funding, annually and cumulatively, for the program;

(7) The number and type of proposals submitted by institutions of higher education for higher education infrastructure investment awards, the number and type of proposals that received an award of higher education infrastructure investment funds, and the amount of such awards; and

(8) The total cumulative number of additional high employer demand degrees produced in Washington state due to the program.

NEW SECTION. **Sec.**  (1) The board may elect to have the state investment board invest the funds in the account and the fund. If the board so elects, the state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the two accounts. All investment and operating costs associated with the investment of money shall be paid under RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the accounts.

(2) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care under RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the state investment board, money in the account and the fund may be commingled for investment with other funds subject to investment by the state investment board.

(4) Members of the state investment board shall not be considered an insurer of the funds or assets and are not liable for any action or inaction.

(5) Members of the state investment board are not liable to the state, to the fund, or to any other person as a result of their activities as members, whether ministerial or discretionary, except for willful dishonesty or intentional violations of law. The state investment board in its discretion may purchase liability insurance for members.

(6) The authority to establish all policies relating to the account and the fund, other than the investment policies as provided in subsections (1) through (3) of this section, resides with the board and program administrator acting in accordance with the principles set forth in this chapter. With the exception of expenses of the state investment board in subsection (1) of this section, disbursements from the account and the fund shall be made only as provided in this act.

(7) The state investment board shall routinely consult and communicate with the board on the investment policy, earnings of the account and fund, and related needs of the program.

NEW SECTION. **Sec.**  (1) The higher education infrastructure investment match account is created in the custody of the state treasurer to be used solely and exclusive for the program created in section 5 of this act. The purpose of the account is to provide state matching funds for grants and contributions from private sources to the fund and for costs of the council and board to administer the program. Revenues to the account consist of deposits into the account, legislative appropriations, and any gifts, grants, or donations received by the council for this purpose. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2)(a) Expenditures, in the form of matching funds, from the account may be made only in years when:

(i) The state match in the amount of ten million dollars or more has been received into the account; and

(ii) The state appropriations for higher education capital construction meets or exceeds a rolling average of the last three biennia for state appropriations for higher education capital construction.

(b) Expenditures may be made only upon receipt of proof from the program administrator of grants and contributions from private sources to the fund for the program. Expenditures, in the form of matching funds, may not exceed the total amount of grants and contributions from private sources. The council must enter into an appropriate agreement with the program administrator to demonstrate exchange of consideration for the matching funds.

(3) Only the executive director of the council or the council's designee may authorize expenditures from the account. Such authorization must be made as soon as practicable following receipt of proof as required under subsection (2)(b) of this section.

(4) Any state matching funds for deposit into the account is subject to the appropriation of amounts for this specific purpose. The state is not obligated to appropriate any moneys to the account. The frequency and amount of grants and contributions from private sources creates no express or implied promise or contract by the state to appropriate matching funds.

**Sec.**  RCW 43.79A.040 and 2016 c 203 s 2, 2016 c 173 s 10, 2016 c 69 s 21, and 2016 c 39 s 7 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the higher education infrastructure investment match account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the multiagency permitting team account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec.**  This chapter may be known and cited as the higher education infrastructure investment act.

NEW SECTION. **Sec.**  Sections 1 through 10 and 12 of this act constitute a new chapter in Title 28B RCW.

**--- END ---**