

# SENATE BILL REPORT

## EHB 2561

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As of April 11, 2010

**Title:** An act relating to creating jobs by funding construction of energy cost saving improvements to public facilities.

**Brief Description:** Funding construction of energy cost saving improvements to public facilities.

**Sponsors:** Representatives Dunshee, Williams, White, Seaquist, Darneille, Eddy, Dickerson, Sells, Rolfes, Chase, Green, Appleton, Sullivan, Simpson, Nelson, Hudgins, Jacks, Hunt, Hasegawa, Ormsby, Moeller and Roberts.

**Brief History:** Passed House: 1/20/10, 57-41; 3/16/10, 54-39.

**Committee Activity:** Ways & Means: 4/11/10.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Brian Sims (786-7431)

**Background:** Washington issues general obligation bonds to finance projects authorized in the capital and transportation budgets. General obligation bonds pledge the full faith and credit and taxing power of the state towards payment of debt service. Bond authorization legislation generally specifies the account or accounts into which bond sale proceeds are deposited, as well as the source of debt service payments. When debt service payments are due, the State Treasurer withdraws the amounts necessary to make the payments from the state General Fund and deposits them into bond retirement funds.

The State Finance Committee, composed of the Governor, the Lieutenant Governor, and the State Treasurer, is responsible for the issuance of all state bonds.

The amount of state general obligation debt that may be incurred is limited by constitutional and statutory restrictions; however, Article VIII, section 3 of the Washington Constitution allows for voter-approved bonds outside the constitutional debt limit.

The Energy Savings Performance Contracting (ESPC) program started in 1986. The Department of General Administration (GA) manages the state ESPC program pursuant to state statute. Through the ESPC program, facility owners contract for energy improvement construction projects resulting in energy-related savings that cover the cost of the

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improvements. The amount of the energy-related savings is at least the cost of the construction project minus incentives from utilities. An Energy Savings Contractor (ESCO) guarantees the savings will cover the cost of the project over a period of generally seven to ten years. The guarantee is in place for the first year of the project and up to ten years if the owner complies with ESCO monitoring and verification requirements. Public facility owners may also contract for ESPC services through a request for qualifications process of their own, instead of using GA's services.

Each biennium, the GA pre-qualifies ESCOs through a request for qualifications process. There are currently ten ESCOs on the GA's list of approved contractors. The ESCOs audit ESPC projects and contract for the construction.

Referendum bills are proposed laws referred to the voters by the Legislature. Referendum bills must be filed with the Secretary of State within 90 days after the final adjournment of the legislative session in which the act was passed. They may be submitted at the next general statewide election or at a special election ordered by the Legislature. The general election is held on the first Tuesday following the first Monday in November. The 2010 statewide general election is on November 2.

**Summary of Bill:** The State Finance Committee is authorized to issue general obligation bonds in the amount of \$861 million to create jobs by constructing capital improvements to public facilities for energy costs savings. The bonds are to be known as the Jobs Act Bonds. The full faith and credit of the state is pledged to pay the principal and interest on the bonds.

The Department of Commerce, in consultation with the GA and Washington State University's (WSU) Energy Program, must administer the Jobs Act.

The GA must develop guidelines for the implementation of energy savings performance contracting projects by December 31, 2010.

An appropriation in the amount of \$858.5 million is made to the Department of Commerce from the Washington Works Account, which is created to receive proceeds from the bond issuance. The appropriation is for grants to public K-12 schools, public higher education institutions, state and locally-owned public facilities, and facilities owned by subdivisions of the state for energy cost savings improvements and related projects that result in energy and utility and operational cost savings. Related projects are projects that must be completed in order for the energy efficiency improvement to be effective.

The Department of Commerce must consult with the GA and the WSU Energy Program to establish a competitive process and evaluate applications. The Department of Commerce determines the final grant awards.

Grants must be awarded in competitive rounds:

- Round 1: grants to K-12 public schools and public higher education institutions. At least 5 percent of the total grant round must be set aside for small K-12 school districts.
- Round 2: grants to K-12 public schools, public higher education institutions, state agencies, local governments, and subdivision of the state. Up to 75 percent of the

total grant round must be awarded to K-12 school districts and higher education institutions. At least 5 percent of the 75 percent must be set aside for small K-12 school districts.

- Additional competitive rounds: grants distributed the same as in Round 2.

Small school districts, for the purposes of the bill, have fewer than 1,000 full-time equivalent students.

Within each round, projects must be weighted and prioritized based on the following criteria and in the following order:

1. Leverage ratio: the higher the leverage ratio of non-state funding sources to state Jobs Act grant, the higher the project ranking.
2. Energy savings: the higher the energy savings, the higher the project ranking.
3. Expediency of expenditure: the more ready a project is to proceed, the higher the project ranking.

Projects not using ESPC must verify energy-related cost savings for ten years, or until the project has paid for itself, whichever is shorter; follow the GA's ESPC program guidelines; and employ a licensed engineer for the energy audit and construction. The Department of Commerce may require third-party verification of energy-related savings if a project is not using an ESCO selected through the GA's request for qualifications (RFQ) process. Third-party verification must be conducted by an ESCO from GA's list of contractors selected through the RFQ, or by a project or educational service district resource conservation manager.

The Department of Commerce may only award funds to the top ranked 85 percent of projects applying in a round until the Department of Commerce determines a final round is appropriate. Projects that do not receive a grant award in one round may reapply.

The Department of Commerce must use bond proceeds to pay for one-half of the cost of preliminary audits if the project does not meet the owner's predetermined cost-effectiveness criteria.

Energy Savings Performance Contractors may not charge the cost of the investment grade audit to the project owner if the audit demonstrates that the project does not meet the owner's predetermined cost-effectiveness criteria.

The Department of Commerce may charge projects administrative fees and may pay the GA's and WSU's Energy Program administration fees.

The Department of Commerce and the GA must report to the Legislature and the Office of Financial Management on the timing and use of the grant funds and program administration functions and fees by the end of each fiscal year until the funds are fully expended and all savings verification requirements are complete.

The State Treasurer must determine a mechanism to allow Washington residents to purchase the Jobs Act Bonds.

The title, intent, and bond authorization proposal is referred to a vote of the people at the next general election. The ballot title is "The legislature has passed House Bill No . . . (this act), concerning job creation through school and other public capital projects. This bill would promote job creation by authorizing bonds to construct energy operational cost savings improvements and related projects to schools and other public facilities."

If the pertinent parts of the act are not approved by the voters, the entire act is null and void.

**Appropriation:** The sum of \$858.5 million is appropriated from the Washington Works Account created in the bill.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, if sections 101 through 203 of this act are not approved by the voters by December 1, 2010, this act is null and void.