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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

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

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

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

(1) The public works board is hereby created.

(2) The board shall be composed of ((~~thirteen~~))seventeen members appointed by the governor for terms of four years, except that five members initially shall be appointed for terms of two years. The board shall include: (a) Three members, two of whom shall be elected officials and one shall be a public works manager, appointed from a list of at least six persons nominated by the association of Washington cities or its successor; (b) three members, two of whom shall be elected officials and one shall be a public works manager, appointed from a list of at least six persons nominated by the Washington state association of counties or its successor; (c) three members appointed from a list of at least six persons nominated jointly by the Washington public utility districts association and a state association of water-sewer districts, or their successors; (d) one member from each of the two major caucuses of the house of representatives to be appointed by the speaker of the house of representatives and one member from each of the two major caucuses of the senate to be appointed by the president of the senate: (i) Each member of the house of representatives who is appointed to the public works board under this chapter may designate another member from the house of representatives to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus; the designee shall have all powers to vote and participate in board deliberations as have the other board members; (ii) each member of the senate who is appointed to the public works board under this chapter may designate another member from the senate to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus; (iii) the designee shall have all powers to vote and participate in board deliberations as have the other board members; and ((~~(d)~~))(e) four members appointed from the general public. In appointing the four general public members, the governor shall endeavor to balance the geographical composition of the board and to include members with special expertise in relevant fields such as public finance, architecture and civil engineering, and public works construction. The governor shall appoint one of the general public members of the board as chair. The term of the chair shall coincide with the term of the governor.

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

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

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

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

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

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

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

((~~(2)~~))(b) Pledge 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. The board shall not pledge any amount greater than the sum of money in the public works assistance account plus money to be received from the payment of the debt service on loans made from that account, nor shall the board pledge the faith and credit or the taxing power of the state or any agency or subdivision thereof to the repayment of obligations issued by any local government.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

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

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

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

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

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

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

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

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

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

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

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

(j) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

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

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

(m) Other criteria that the board considers advisable.

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

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

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

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

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

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

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

(vi) Whether the project consolidates or regionalizes systems;

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

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

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

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

(A) Efficient use of state resources;

(B) Preservation and enhancement of health and safety;

(C) Abatement of pollution and protection of the environment;

(D) Creation of new, family wage jobs, and avoidance of shifting existing jobs from one Washington state community to another;

(E) Fostering economic development consistent with chapter 36.70A RCW;

(F) Efficiency in delivery of goods and services, public transit, and transportation;

(G) Avoidance of additional costs to state and local governments that adversely impact local residents and small businesses; and

(H) Reduction of the overall cost of public infrastructure; and

(xi) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(b) Before November 1, 2014, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a ranked list of qualified public works projects which have been evaluated by the board and are recommended for funding by the legislature. The maximum amount of funding that the board may recommend for any jurisdiction is ten million dollars per biennium. For each project on the ranked list, as well as for eligible projects not recommended for funding, the board must document the numerical ranking that was assigned.

(6) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(7) The board must implement policies and procedures designed to maximize local government use of federal funds to finance local infrastructure projects.

(8) Before November 1st of each even-numbered year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection ((~~(10)~~))(11) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list must include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list must also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

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

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

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

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

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

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

((~~(14)~~))(15)(a) For public works assistance account application rounds conducted during the 2013‑2015 fiscal biennium, the board must implement policies and procedures designed to maximize local government use of federally funded drinking water and clean water state revolving funds operated by the state departments of health and ecology. The board, department of ecology, and department of health must jointly develop evaluation criteria and application procedures that will increase access of eligible drinking water and wastewater projects to the public works assistance account for short‑term preconstruction financing and to the federally funded state revolving funds for construction financing. The procedures must also strengthen coordinated funding of preconstruction and construction projects.

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

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

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

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

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

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

**--- END ---**