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**SUBSTITUTE SENATE BILL 6497**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Economic Development (originally sponsored by Senators Shin, T. Sheldon, Rasmussen, Winsley, Kohl-Welles, Roach, McAuliffe, Fraser and B. Sheldon)

READ FIRST TIME 02/05/04.

1       AN ACT Relating to providing a source of funding for customized  
2 work force training; amending RCW 43.163.020; adding a new section to  
3 chapter 82.32 RCW; and adding a new chapter to Title 28C RCW.

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

5       NEW SECTION. **Sec. 1.** The legislature finds that the availability  
6 of a trained work force is critical to attracting and retaining  
7 businesses. The legislature also finds that the growth of many  
8 businesses is limited by an unmet need for training. Furthermore,  
9 training not only helps business, it also improves the quality of life  
10 for workers and communities. Because of the statewide public benefit  
11 to be gained from instituting a customized training program, the  
12 legislature intends to create a new program to fund work force training  
13 through the sale of bonds. The bonds themselves will be paid by the  
14 earmarking of the state business and occupation tax and public utility  
15 tax that is imposed on participating employers.

16       NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
17 section apply throughout this chapter unless the context clearly  
18 requires otherwise.

1 (1) "Authority" means the Washington economic development finance  
2 authority created under RCW 43.163.020, or any board, body, commission,  
3 department, or officer succeeding to the principal functions of the  
4 authority or to whom the powers conferred upon the authority shall be  
5 given by law.

6 (2) "Board" means the state board for community and technical  
7 colleges.

8 (3) "Bond resolution" means any resolution of the authority,  
9 adopted under this chapter, authorizing the issuance and sale of bonds.

10 (4) "Bonds" means bonds, notes, commercial paper, certificates of  
11 indebtedness, or other evidences of indebtedness of the authority  
12 issued under this chapter.

13 (5) "Community college" has the definition in RCW 28B.50.030.

14 (6) "Costs of training" means the direct payments made under a  
15 contract with a community college for formal technical or skill  
16 training, including basic skills. "Costs of training" includes amounts  
17 in the contract for costs of instruction, materials, equipment, rental  
18 of class space, marketing, and overhead. "Costs of training" does not  
19 include employee tuition reimbursements unless the tuition  
20 reimbursement is specifically included in a contract.

21 (7) "Participant" means a private employer that, under this  
22 chapter, undertakes a training program with a community college or  
23 technical college.

24 (8) "Technical college" has the definition in RCW 28B.50.030.

25 (9) "Training program" means a program funded under this chapter at  
26 a community college or a technical college.

27 (10) "Trust indenture" means any agreement, trust indenture, or  
28 other similar instrument by and between the authority and one or more  
29 corporate trustees.

30 NEW SECTION. **Sec. 3.** (1) The Washington customized employment  
31 training program is hereby created to allow employers locating or  
32 expanding in the state to receive training assistance to provide  
33 training for employees.

34 (2)(a) Application to receive funding under this program shall be  
35 made to the board in a form and manner as specified by the board.  
36 Successful applicants shall be provided with a training grant to be  
37 used to pay for the costs of training. Employers may not receive funds

1 for training costs which exceed the maximum annual training cost per  
2 employee, as established by the state board for community and technical  
3 colleges, and are not eligible to receive total grants over five  
4 hundred thousand dollars per calendar year.

5 (b) Approval shall be granted for applicants who meet the following  
6 criteria:

7 (i) The employer must have entered into an agreement with a  
8 community college or a technical college to engage in customized  
9 training and the employer must agree to: (A) Reimburse the college in  
10 an amount equal to one-half of the amount of the training grant; (B)  
11 pay the taxes to be deposited into the employment training finance  
12 account pursuant to section 11 of this act; and (C) make such other  
13 payments as the college specifies to ensure payments into the  
14 employment training finance account sufficient to cover the costs  
15 associated with the bonds issued under section 4 of this act. The  
16 taxes deposited in the employment training finance account do not  
17 constitute payment to the college.

18 (ii) The employer must either: (A) Be engaged in activities  
19 subject to tax under chapter 82.04 or 82.16 RCW and must report, or  
20 expect to report, such tax over a ten-year period in an annual amount  
21 of at least one-tenth of the amount of the grant, or, if more than one  
22 grant is received, at least one-tenth the total of all grants received  
23 for which taxes are being deposited into the employment training  
24 finance account pursuant to section 11 of this act; or (B) document the  
25 availability of a job skills grant under RCW 28C.04.420 or other funds  
26 sufficient to pay, either alone or when combined with the payments  
27 required under chapter 82.04 or 82.16 RCW, the costs associated with  
28 any bond issued under section 4 of this act within ten years of the  
29 issuance of the bond.

30 (iii) The employer must ensure that the number of employees an  
31 employer has in the state during the calendar year following the  
32 completion of the training program will equal the number of employees  
33 the employer had in the state in the calendar year preceding the start  
34 of the training program plus seventy-five percent of the number of  
35 trainees. The agreement with the community or technical college  
36 provided for in (b)(i) of this subsection shall specify terms for  
37 additional reimbursement or payment to the employment training finance  
38 account by the employer if the criterion of this subsection is not met.

1 (iv) The training grant may not be used to train workers who have  
2 been hired as a result of a strike or lockout.

3 (c) Training grants are available on a first-come first-served  
4 basis, with priority based on the date and time the application is  
5 received by the board.

6 (3) Community colleges and technical colleges may enter into  
7 agreements with four-year institutions of higher education as defined  
8 in RCW 28B.10.016 in accordance with the interlocal cooperation act,  
9 chapter 39.34 RCW.

10 (4) The board may adopt rules to implement this section.

11 NEW SECTION. **Sec. 4.** SPECIAL OBLIGATION BONDS--ISSUANCE. (1) The  
12 authority shall notify the department of revenue of those employers  
13 participating in the program under section 3 of this act.

14 (2) The authority may, from time to time, issue its special  
15 obligation bonds in order to carry out the purposes of this chapter and  
16 to enable the authority to exercise any of the powers granted to it in  
17 this chapter. The bonds may be issued on either a taxable or federally  
18 tax-exempt basis. The bonds shall be issued pursuant to a bond  
19 resolution or trust indenture and shall be payable solely out of the  
20 employment training finance account created in section 11 of this act.  
21 The employment training finance account shall be funded in whole or in  
22 part from moneys paid by one or more participants for whose benefit  
23 such bonds were issued and from any other sources authorized by law,  
24 including from the proceeds of bonds issued by the authority for the  
25 purpose of refunding any outstanding bonds of the authority.

26 (3) The bonds may be secured by:

27 (a) A first lien against any unexpended proceeds of the bonds;

28 (b) A first lien against moneys in the employment training finance  
29 account created in section 11 of this act;

30 (c) A first or subordinate lien against the revenue and receipts of  
31 the participant or participants;

32 (d) A first or subordinate security interest against any real or  
33 personal property, tangible or intangible, of the participant or  
34 participants, including, but not limited to, the training program  
35 financed by the authority;

36 (e) Any other real or personal property of the participant or  
37 participants, tangible or intangible;

1 (f) Any combination of (a) through (e) of this subsection; or  
2 (g) Any other security the authority may deem appropriate or  
3 necessary.

4 Any security interest created against the unexpended bond proceeds  
5 and against the employment training finance account shall be  
6 immediately valid and binding against the moneys and any securities in  
7 which the moneys may be invested without authority or trustee  
8 possession, and the security interest shall be prior to any party  
9 having any competing claim against the moneys or securities, without  
10 filing or recording under Article 9A of the Uniform Commercial Code,  
11 Title 62A RCW, and regardless of whether the party has notice of the  
12 security interest.

13 (4) The bonds may be issued as serial bonds or as term bonds or any  
14 such combination. The bonds shall bear such date or dates; mature at  
15 such time or times; bear interest at such rate or rates, either fixed  
16 or variable; be payable at such time or times; be in such  
17 denominations; carry such registration privileges; be made  
18 transferable, exchangeable, and interchangeable; be payable in lawful  
19 money of the United States of America at such place or places; be  
20 subject to such terms of redemption; and be sold at public or private  
21 sale, in such manner, at such time, and at such price as the authority  
22 shall determine. The bonds shall be executed by the manual or  
23 facsimile signatures of the chairperson and the authority's duly  
24 elected secretary or its executive director, and by the trustee if the  
25 authority determines to use a trustee. At least one signature shall be  
26 manually subscribed.

27 (5) Any bond resolution, trust indenture, or agreement with a  
28 participant relating to bonds issued by the authority or the financing  
29 or refinancing made available by this act may contain provisions, which  
30 may be made a part of the contract with the holders or owners of the  
31 bonds to be issued, pertaining to the following, among other matters:

32 (a) The security interests granted by the participant to secure  
33 repayment of any amounts financed and the performance by the  
34 participant of its other obligations in the financing;

35 (b) The security interests granted to the holders or owners of the  
36 bonds to secure repayment of the bonds;

37 (c) Rentals, fees, and other amounts to be charged, and the sums to

1 be raised in each year through such charges, and the use, investment,  
2 and disposition of the sums;

3 (d) The segregation of reserves or sinking funds, and the  
4 regulation, investment, and disposition thereof;

5 (e) Limitations on the uses of the project;

6 (f) Limitations on the purposes to which, or the investments in  
7 which, the proceeds of the sale of any issue of bonds may be applied;

8 (g) Terms pertaining to the issuance of additional parity bonds;

9 (h) Terms pertaining to the incurrence of parity debt;

10 (i) The refunding of outstanding bonds;

11 (j) Procedures, if any, by which the terms of any contract with  
12 bondholders may be amended or abrogated;

13 (k) Acts or failures to act that constitute a default by the  
14 participant or the authority in their respective obligations and the  
15 rights and remedies in the event of a default;

16 (l) Terms governing performance by the trustee of its obligation;  
17 or

18 (m) Such other additional covenants, agreements, and provisions as  
19 are deemed necessary, useful, or convenient by the authority for the  
20 security of the holders of the bonds.

21 (6) Bonds may be issued by the authority to refund other  
22 outstanding authority bonds, at or before the maturity thereof, and to  
23 pay any redemption premium with respect thereto. Bonds issued for such  
24 refunding purposes may be combined with bonds issued for the financing  
25 or refinancing of new training programs. Pending the application of  
26 the proceeds of the refunding bonds to the redemption of the bonds to  
27 be redeemed, the authority may enter into an agreement or agreements  
28 with a corporate trustee under section 7 of this act with respect to  
29 the interim investment of the proceeds and the application of the  
30 proceeds and the earnings on the proceeds to the payment of the  
31 principal of and interest on, and the redemption of the bonds to be  
32 redeemed.

33 (7) All bonds and any interest coupons appertaining to the bonds  
34 are negotiable instruments under Title 62A RCW.

35 (8) Neither the members of the authority, nor its employees or  
36 agents, nor any person executing the bonds is liable personally on the  
37 bonds or subject to any personal liability or accountability by reason  
38 of the issuance of the bonds.

1 (9) The authority may purchase its bonds with any of its funds  
2 available for the purchase. The authority may hold, pledge, cancel, or  
3 resell the bonds subject to and in accordance with agreements with  
4 bondholders.

5 NEW SECTION. **Sec. 5.** SPECIAL OBLIGATION BONDS--PAYMENT--  
6 SEGREGATION OF PROCEEDS AND MONEYS. Bonds issued under this chapter  
7 shall not be deemed to constitute obligations, either general or  
8 special, of the state or of any political subdivision of the state, or  
9 a pledge of the faith and credit of the state or of any political  
10 subdivision, or a general obligation of the authority. The bonds shall  
11 be special obligations of the authority and shall be payable solely  
12 from the employment training finance account created in section 11 of  
13 this act. Except for any initial appropriations which may be made  
14 after the biennium ending June 30, 2005, the fund or funds shall be  
15 funded in whole or in part from moneys paid by one or more participants  
16 for whose benefit such bonds were issued and from any other sources  
17 authorized by law, including from the proceeds of bonds issued by the  
18 authority for the purpose of refunding any outstanding bonds of the  
19 authority. The issuance of bonds under this chapter shall not  
20 obligate, directly, indirectly, or contingently, the state or any  
21 political subdivision of the state to levy any taxes or appropriate or  
22 expend any funds for the payment of the principal or the interest on  
23 the bonds.

24 Neither the proceeds of bonds issued under this chapter, any moneys  
25 used or to be used to pay the principal of or interest on the bonds,  
26 nor any moneys received by the authority to defray its administrative  
27 costs shall constitute public money or property. All of such moneys  
28 shall be kept segregated and set apart from funds of the state and any  
29 political subdivision of the state and shall not be subject to  
30 appropriation or allotment by the state or subject to the provisions of  
31 chapter 43.88 RCW.

32 NEW SECTION. **Sec. 6.** AGREEMENTS WITH PARTICIPANTS--PAYMENT OF  
33 COSTS AND EXPENSES. In connection with any bonds issued by the  
34 authority, the authority shall enter into agreements with participants  
35 which shall provide for the payment by each participant of amounts  
36 which shall be sufficient, together with other revenues available to

1 the authority, if any, to: (1) Pay the issuance and administrative  
2 fees set by the authority; (2) pay the costs of conducting the training  
3 program financed by the authority, to the extent that the payment of  
4 the costs has not otherwise been adequately provided for; (3) pay the  
5 business and occupation tax and utility tax due, or, if the participant  
6 is eligible for an exemption or credit on such tax, pay an amount  
7 equivalent to the amount that would be due, but for the exemption or  
8 credit, into the employment training finance account to pay the  
9 principal of, premium, if any, and interest on outstanding bonds of the  
10 authority issued in respect of such program or programs as the same  
11 shall become due and payable; and (4) create and maintain reserves  
12 required or provided for in any bond resolution or trust indenture  
13 authorizing the issuance of such bonds of the authority. The payments  
14 shall not be subject to supervision or regulation by any department,  
15 committee, board, body, bureau, or agency of the state other than the  
16 authority.

17 NEW SECTION. **Sec. 7.** MONEYS DEEMED TRUST FUNDS--AGREEMENT OR  
18 TRUST INDENTURE WITH BANK OR TRUST COMPANY. All moneys received by or  
19 on behalf of the authority under this chapter, whether as proceeds from  
20 the sale of bonds or from participants or from other sources, shall be  
21 deemed to be trust funds to be held and applied solely as provided in  
22 this chapter. The authority, in lieu of receiving and applying the  
23 moneys itself, may enter into an agreement or trust indenture with one  
24 or more banks or trust companies having the power and authority to  
25 conduct trust business in the state to:

26 (1) Perform all of any part of the obligations of the authority  
27 with respect to: (a) Bonds issued by it; (b) the receipt, investment,  
28 and application of the proceeds of the bonds and moneys paid by a  
29 participant or available from other sources for the payment of the  
30 bonds; (c) the enforcement of the obligations of a participant in  
31 connection with the financing or refinancing of any project; and (d)  
32 other matters relating to the exercise of the authority's powers under  
33 this chapter;

34 (2) Receive, hold, preserve, and enforce any security interest or  
35 evidence of security interest granted by a participant for purposes of  
36 securing the payment of the bonds; and



1 (3) Act on behalf of the authority or the holders or owners of  
2 bonds of the authority for purposes of assuring or enforcing the  
3 payment of the bonds, when due.

4 NEW SECTION. **Sec. 8.** CHAPTER SUPPLEMENTAL--APPLICATION OF OTHER  
5 LAWS. This chapter provides a complete, additional, and alternative  
6 method for accomplishing the purposes of this chapter and shall be  
7 regarded as supplemental and additional to powers conferred by other  
8 laws. The issuance of bonds and refunding bonds under this chapter  
9 need not comply with the requirements of any other law applicable to  
10 the issuance of bonds.

11 NEW SECTION. **Sec. 9.** CONSTRUCTION. This chapter, being necessary  
12 for the welfare of the state and its inhabitants, shall be liberally  
13 construed to effect its purposes. Insofar as the provisions of this  
14 chapter are inconsistent with the provisions of any general or special  
15 law, or parts thereof, the provisions of this chapter shall be  
16 controlling.

17 NEW SECTION. **Sec. 10.** CAPTIONS NOT LAW. Captions used in this  
18 chapter are not any part of the law.

19 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.32 RCW  
20 to read as follows:

21 The business and occupation tax and the public utility taxes not  
22 otherwise encumbered by the requirements of RCW 82.16.020(3) received  
23 from a person who is an employer participating under section 3 of this  
24 act shall be deposited into the employment training finance account,  
25 which is hereby created in the custody of the state treasurer. Only  
26 the Washington economic development finance authority may authorize  
27 expenditures from the account and no appropriation is required for  
28 expenditures. The money in the account must be used for the purposes  
29 of bond resolution or trust indenture under which the bonds are issued  
30 under chapter 28C.-- RCW (sections 1 through 10 of this act). The  
31 deposit of revenue under this section from a person shall cease when  
32 the authority specifies that the participant has met the monetary  
33 obligations of the program.

1       **Sec. 12.** RCW 43.163.020 and 1995 c 399 s 89 are each amended to  
2 read as follows:

3       The Washington economic development finance authority is  
4 established as a public body corporate and politic, with perpetual  
5 corporate succession, constituting an instrumentality of the state of  
6 Washington exercising essential governmental functions. The authority  
7 is a public body within the meaning of RCW 39.53.010.

8       The authority shall consist of (~~(eighteen [seventeen])~~) seventeen  
9 members as follows: The director of the department of community,  
10 trade, and economic development, the director of the (~~(department of~~  
11 ~~agriculture)~~) state board for community and technical colleges, the  
12 state treasurer, one member from each caucus in the house of  
13 representatives appointed by the speaker of the house, one member from  
14 each caucus in the senate appointed by the president of the senate, and  
15 ten public members with one representative of women-owned businesses  
16 and one representative of minority-owned businesses and with at least  
17 three of the members residing east of the Cascades. The public members  
18 shall be residents of the state appointed by the governor on the basis  
19 of their interest or expertise in trade, agriculture or business  
20 finance or jobs creation and development. One of the public members  
21 shall be appointed by the governor as chair of the authority and shall  
22 serve as chair of the authority at the pleasure of the governor. The  
23 authority may select from its membership such other officers as it  
24 deems appropriate.

25       The term of the persons appointed by the governor as public members  
26 of the authority, including the public member appointed as chair, shall  
27 be four years from the date of appointment, except that the term of  
28 three of the initial appointees shall be for two years from the date of  
29 appointment and the term of four of the initial appointees shall be for  
30 three years from the date of appointment. The governor shall designate  
31 the appointees who will serve the two-year and three-year terms.

32       In the event of a vacancy on the authority due to death,  
33 resignation or removal of one of the public members, or upon the  
34 expiration of the term of one of the public members, the governor shall  
35 appoint a successor for the remainder of the unexpired term. If either  
36 of the state offices is abolished, the resulting vacancy on the  
37 authority shall be filled by the state officer who shall succeed  
38 substantially to the power and duties of the abolished office.

1 Any public member of the authority may be removed by the governor  
2 for misfeasance, malfeasance or willful neglect of duty after notice  
3 and a public hearing, unless such notice and hearing shall be expressly  
4 waived in writing by the affected public member.

5 The state officials serving in ex officio capacity may each  
6 designate an employee of their respective departments to act on their  
7 behalf in all respects with regard to any matter to come before the  
8 authority. Such designations shall be made in writing in such manner  
9 as is specified by the rules of the authority.

10 The members of the authority shall serve without compensation but  
11 shall be entitled to reimbursement, solely from the funds of the  
12 authority, for expenses incurred in the discharge of their duties under  
13 this chapter. The authority may borrow funds from the department for  
14 the purpose of reimbursing members for expenses; however, the authority  
15 shall repay the department as soon as practicable.

16 A majority of the authority shall constitute a quorum.

17 NEW SECTION. **Sec. 13.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act  
22 constitute a new chapter in Title 28C RCW.

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