
SUBSTITUTE SENATE BILL 5684

State of Washington

65th Legislature

2017 Regular Session

By Senate Higher Education (originally sponsored by Senators Palumbo and Wilson)

READ FIRST TIME 02/17/17.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that new investments
6 in higher education infrastructure are necessary to support a
7 workforce that aligns with the Washington job market. Despite
8 increases in degree production, there remain acute shortages in high-
9 demand programs of study.

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

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Account" means the higher education infrastructure act match
5 account created in section 9 of this act.

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

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

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

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

14 (6) "Higher education infrastructure investment project" means a
15 capital project contained on the prioritized lists submitted by the
16 council to the office of financial management pursuant to RCW
17 28B.77.070 that benefit high-demand programs of study, or new capital
18 project proposals presented to the board by public institutions that
19 benefit high-demand programs of study, or capital equipment projects
20 that benefit high-demand programs of study.

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

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

26 NEW SECTION. **Sec. 3.** (1) The higher education infrastructure
27 board is created. The board consists of eleven members appointed by
28 the governor:

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

1 (b) Of the remaining six members, the governor must appoint four
2 capital budget leads from both the majority and minority parties in
3 the senate and the house of representatives. In the event that one of
4 the capital budget leads vacates his or her office, the legislature
5 shall fill the open position as soon as practicable.

6 (c) The remaining two members should be chosen from lists
7 provided by the speaker of the house of representatives, the minority
8 leader of the house of representatives, and the majority and minority
9 leaders of the senate.

10 (d) There will also be two nonvoting members of the board, one
11 from the state board for community and technical colleges and one
12 from the council of presidents.

13 (e) The governor must make initial appointments to the board no
14 later than six months following the initial private sector donation.

15 (2) The term of a member is four years from the date of his or
16 her appointment except the initial term of two members appointed
17 under subsection (1)(a) of this section and three members appointed
18 under subsection (1)(b) of this section must be two years to create a
19 staggered appointment process. A member may be appointed to not more
20 than two full consecutive terms. A member appointed by the governor
21 may be removed by the governor for cause under RCW 43.06.070 and
22 43.06.080. The members may not be compensated but may be reimbursed,
23 solely from the fund, for expenses incurred in the discharge of their
24 duties under this chapter.

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

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

30 (5) If a vacancy occurs, the governor shall fill the vacancy for
31 the remainder of the term of the board member whose position has
32 become vacant. If the vacancy by resignation or expiration of term is
33 a member who was selected from the lists provided by the speaker of
34 the house of representatives, the minority leader of the house of
35 representatives, and the majority and minority leaders of the senate,
36 the governor must solicit new lists from the speaker and the majority
37 and minority leaders for consideration in filling the vacancy.

38 (6) Meetings of the board must be held in accordance with the
39 open public meetings act, chapter 42.30 RCW, and at the call of the
40 chair or when a majority of the members so requests. Meetings of the

1 board may be held at any location within or out of the state, and
2 members may participate in a meeting of the board by means of a
3 conference telephone or similar communication equipment under RCW
4 23B.08.200.

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

10 (8) Grants from the board must not be disbursed until after
11 January 1, 2019.

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

15 NEW SECTION. **Sec. 4.** (1) Any person appointed to serve as an
16 appointee to the higher education infrastructure board is subject to
17 senate confirmation.

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

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

26 NEW SECTION. **Sec. 5.** (1) The higher education infrastructure
27 investment program is established.

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

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

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

36 (b) Develop criteria for evaluating proposals and awarding funds
37 to the proposals deemed most likely to increase the number of

1 baccalaureate degrees, applied baccalaureate degrees, applied
2 associate degrees, and certificates in workforce training;

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 6.** (1) The board shall be staffed by the
30 program administrator. The program administrator, under contract with
31 the board, shall staff the board and shall have the duties and
32 responsibilities provided in this chapter including, but not limited
33 to, publicizing the program, soliciting project proposals, and
34 achieving the maximum possible rate of return on investment of the
35 account, while ensuring transparency in the investment decisions and
36 processes. Duties exercised jointly with the board include, but are
37 not limited to, soliciting project proposals and funds and setting
38 annual fundraising goals. The program administrator shall be paid an
39 administrative fee as determined by the board.

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

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

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

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

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

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

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

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

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

31 (c) Ensure that the program's administrative costs are one
32 percent of revenues from private sources or less.

33 NEW SECTION. **Sec. 7.** (1) Annually each December 1st, the board,
34 together with the program administrator, shall report to the governor
35 and the appropriate committees of the legislature regarding the
36 program including, but not limited to:

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

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

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

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

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

16 NEW SECTION. **Sec. 8.** (1) The board may elect to have the state
17 investment board invest the funds in the account and the fund. If the
18 board so elects, the state investment board has the full power to
19 invest, reinvest, manage, contract, sell, or exchange investment
20 money in the two accounts. All investment and operating costs
21 associated with the investment of money shall be paid under RCW
22 43.33A.160 and 43.84.160. With the exception of these expenses, the
23 earnings from the investment of the money shall be retained by the
24 accounts.

25 (2) All investments made by the state investment board shall be
26 made with the exercise of that degree of judgment and care under RCW
27 43.33A.140 and the investment policy established by the state
28 investment board.

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

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

35 (5) Members of the state investment board are not liable to the
36 state, to the fund, or to any other person as a result of their
37 activities as members, whether ministerial or discretionary, except
38 for willful dishonesty or intentional violations of law. The state

1 investment board in its discretion may purchase liability insurance
2 for members.

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

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

14 NEW SECTION. **Sec. 9.** (1) The higher education infrastructure
15 act match account is created in the custody of the state treasurer to
16 be used solely and exclusive for the program created in section 5 of
17 this act. The purpose of the account is to provide state matching
18 funds for grants and contributions from private sources to the fund
19 and for costs of the council and board to administer the program.
20 Revenues to the account consist of deposits into the account,
21 legislative appropriations, and any gifts, grants, or donations
22 received by the council for this purpose. The account is subject to
23 the allotment procedures under chapter 43.88 RCW, but an
24 appropriation is not required for expenditures.

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

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

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

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

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

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

11 (5) Expenditures from the account may not be used to maintain or
12 operate facilities or equipment constructed with funds from the
13 account.

14 **Sec. 10.** RCW 43.79A.040 and 2016 c 203 s 2, 2016 c 173 s 10,
15 2016 c 69 s 21, and 2016 c 39 s 7 are each reenacted and amended to
16 read as follows:

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

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

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

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

36 (b) The following accounts and funds must receive their
37 proportionate share of earnings based upon each account's or fund's
38 average daily balance for the period: The 24/7 sobriety account, the
39 Washington promise scholarship account, the Washington advanced

1 college tuition payment program account, the Washington college
2 savings program account, the accessible communities account, the
3 Washington achieving a better life experience program account, the
4 community and technical college innovation account, the agricultural
5 local fund, the American Indian scholarship endowment fund, the
6 foster care scholarship endowment fund, the foster care endowed
7 scholarship trust fund, the contract harvesting revolving account,
8 the Washington state combined fund drive account, the commemorative
9 works account, the county enhanced 911 excise tax account, the toll
10 collection account, the developmental disabilities endowment trust
11 fund, the energy account, the fair fund, the family leave insurance
12 account, the food animal veterinarian conditional scholarship
13 account, the fruit and vegetable inspection account, the future
14 teachers conditional scholarship account, the game farm alternative
15 account, the GET ready for math and science scholarship account, the
16 Washington global health technologies and product development
17 account, the grain inspection revolving fund, the higher education
18 infrastructure act match account, the industrial insurance rainy day
19 fund, the juvenile accountability incentive account, the law
20 enforcement officers' and firefighters' plan 2 expense fund, the
21 local tourism promotion account, the multiagency permitting team
22 account, the pilotage account, the produce railcar pool account, the
23 regional transportation investment district account, the rural
24 rehabilitation account, the Washington sexual assault kit account,
25 the stadium and exhibition center account, the youth athletic
26 facility account, the self-insurance revolving fund, the children's
27 trust fund, the Washington horse racing commission Washington bred
28 owners' bonus fund and breeder awards account, the Washington horse
29 racing commission class C purse fund account, the individual
30 development account program account, the Washington horse racing
31 commission operating account, the life sciences discovery fund, the
32 Washington state heritage center account, the reduced cigarette
33 ignition propensity account, the center for childhood deafness and
34 hearing loss account, the school for the blind account, the
35 Millersylvania park trust fund, the public employees' and retirees'
36 insurance reserve fund, and the radiation perpetual maintenance fund.

37 (c) The following accounts and funds must receive eighty percent
38 of their proportionate share of earnings based upon each account's or
39 fund's average daily balance for the period: The advanced right-of-
40 way revolving fund, the advanced environmental mitigation revolving

1 account, the federal narcotics asset forfeitures account, the high
2 occupancy vehicle account, the local rail service assistance account,
3 and the miscellaneous transportation programs account.

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

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

14 NEW SECTION. **Sec. 11.** This chapter may be known and cited as
15 the higher education infrastructure act.

16 NEW SECTION. **Sec. 12.** Sections 1 through 9 and 11 of this act
17 constitute a new chapter in Title 28B RCW.

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