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SECOND SUBSTITUTE HOUSE BILL 2146

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State of Washington                      64th Legislature                      2016 Regular Session

By House Capital Budget (originally sponsored by Representatives Kilduff, Smith, Dunshee, and Stanford)

READ FIRST TIME 02/09/16.

1            AN ACT Relating to the public works board regarding the public  
2 works assistance account program interest rates, project ranking,  
3 board membership, and other requirements; amending RCW 43.155.030,  
4 43.155.060, 43.155.065, 43.155.068, and 43.155.070; and adding a new  
5 section to chapter 43.155 RCW.

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

7            **Sec. 1.** RCW 43.155.030 and 1999 c 153 s 58 are each amended to  
8 read as follows:

9            (1) The public works board is hereby created.

10           (2) The board shall be composed of (~~thirteen~~) seventeen members  
11 appointed by the governor for terms of four years, except that five  
12 members initially shall be appointed for terms of two years. The  
13 board shall include: (a) Three members, two of whom shall be elected  
14 officials and one shall be a public works manager, appointed from a  
15 list of at least six persons nominated by the association of  
16 Washington cities or its successor; (b) three members, two of whom  
17 shall be elected officials and one shall be a public works manager,  
18 appointed from a list of at least six persons nominated by the  
19 Washington state association of counties or its successor; (c) three  
20 members appointed from a list of at least six persons nominated  
21 jointly by the Washington public utility districts association and a

1 state association of water-sewer districts, or their successors; (d)  
2 one member from each of the two major caucuses of the house of  
3 representatives to be appointed by the speaker of the house of  
4 representatives and one member from each of the two major caucuses of  
5 the senate to be appointed by the president of the senate: (i) Each  
6 member of the house of representatives who is appointed to the public  
7 works board under this chapter may designate another member from the  
8 house of representatives to take his or her place on the board for  
9 meetings at which the member will be absent, as long as the  
10 designated member belongs to the same caucus; the designee shall have  
11 all powers to vote and participate in board deliberations as have the  
12 other board members; (ii) each member of the senate who is appointed  
13 to the public works board under this chapter may designate another  
14 member from the senate to take his or her place on the board for  
15 meetings at which the member will be absent, as long as the  
16 designated member belongs to the same caucus; (iii) the designee  
17 shall have all powers to vote and participate in board deliberations  
18 as have the other board members; and ((+d)) (e) four members  
19 appointed from the general public. In appointing the four general  
20 public members, the governor shall endeavor to balance the  
21 geographical composition of the board and to include members with  
22 special expertise in relevant fields such as public finance,  
23 architecture and civil engineering, and public works construction.  
24 The governor shall appoint one of the general public members of the  
25 board as chair. The term of the chair shall coincide with the term of  
26 the governor.

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

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

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

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

3       (1) In order to aid the financing of public works projects, the  
4 board may:

5       ~~((1))~~ (a) Make ~~((low-interest or interest-free))~~ loans to local  
6 governments from the public works assistance account or other funds  
7 and accounts for the purpose of assisting local governments in  
8 financing public works projects. ~~((The board may require such terms  
9 and conditions and may charge such rates of interest on its loans as  
10 it deems necessary or convenient to carry out the purposes of this  
11 chapter.))~~ Money received from local governments in repayment of  
12 loans made under this section shall be paid into the public works  
13 assistance account for uses consistent with this chapter.

14       ~~((2))~~ (b) Pledge money in the public works assistance account,  
15 or money to be received by the public works assistance account, to  
16 the repayment of all or a portion of the principal of or interest on  
17 obligations issued by local governments to finance public works  
18 projects. The board shall not pledge any amount greater than the sum  
19 of money in the public works assistance account plus money to be  
20 received from the payment of the debt service on loans made from that  
21 account, nor shall the board pledge the faith and credit or the  
22 taxing power of the state or any agency or subdivision thereof to the  
23 repayment of obligations issued by any local government.

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

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

30       (2)(a) When establishing interest rates for loan programs  
31 authorized in this chapter, the board must base interest rates on the  
32 average daily market interest rate for tax-exempt municipal bonds as  
33 published in the bond buyer's index for the period from sixty to  
34 thirty days before the start of the application cycle.

35       (b) For projects with a repayment period between five and twenty  
36 years, the rate must be fifty percent of the market rate.

37       (c) For projects with a repayment period under five years, the  
38 rate must be twenty-five percent of the market rate.

39       (d) For any year in which the average daily market interest rate  
40 for tax-exempt municipal bonds for the period from sixty to thirty

1 days before the start of an application cycle is nine percent or  
2 greater, the board may cap interest rates at four percent for  
3 projects with a repayment period between five and twenty years and at  
4 two percent for projects with a repayment period under five years.

5 (e) The board must also provide reduced interest rates, extended  
6 repayment periods, or forgivable principal loans for projects that  
7 meet financial hardship criteria as measured by the affordability  
8 index or similar standard measure of financial hardship.

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

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

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

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

32 (1) The board may make (~~low-interest or interest-free~~) loans to  
33 local governments for preconstruction activities on public works  
34 projects before the legislature approves the construction phase of  
35 the project. Preconstruction activities include design, engineering,  
36 bid-document preparation, environmental studies, right-of-way  
37 acquisition, and other preliminary phases of public works projects as  
38 determined by the board. The purpose of the loans authorized in this

1 section is to accelerate the completion of public works projects by  
2 allowing preconstruction activities to be performed before the  
3 approval of the construction phase of the project by the legislature.

4 (2) Projects receiving loans for preconstruction activities under  
5 this section must be evaluated using the (~~priority~~) process and  
6 factors in RCW 43.155.070(~~(+2)~~) (4). The receipt of a loan for  
7 preconstruction activities does not ensure the receipt of a  
8 construction loan for the project under this chapter. Construction  
9 loans for projects receiving a loan for preconstruction activities  
10 under this section are subject to legislative approval under RCW  
11 43.155.070 (~~(4) and (5)~~) (6). The board shall adopt a single  
12 application process for local governments seeking both a loan for  
13 preconstruction activities under this section and a construction loan  
14 for the project.

15 **Sec. 5.** RCW 43.155.070 and 2015 3rd sp.s. c 3 s 7033 are each  
16 amended to read as follows:

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

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

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

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

27 (2) Except where necessary to address a public health need or  
28 substantial environmental degradation, a county, city, or town  
29 planning under RCW 36.70A.040 may not receive financial assistance  
30 under this chapter unless it has adopted a comprehensive plan,  
31 including a capital facilities plan element, and development  
32 regulations as required by RCW 36.70A.040. This subsection does not  
33 require any county, city, or town planning under RCW 36.70A.040 to  
34 adopt a comprehensive plan or development regulations before  
35 requesting or receiving financial assistance under this chapter if  
36 such request is made before the expiration of the time periods  
37 specified in RCW 36.70A.040. A county, city, or town planning under  
38 RCW 36.70A.040 that has not adopted a comprehensive plan and  
39 development regulations within the time periods specified in RCW

1 36.70A.040 may apply for and receive financial assistance under this  
2 chapter if the comprehensive plan and development regulations are  
3 adopted as required by RCW 36.70A.040 before executing a contractual  
4 agreement for financial assistance with the board.

5 (3) In considering awarding financial assistance for public  
6 facilities to special districts requesting funding for a proposed  
7 facility located in a county, city, or town planning under RCW  
8 36.70A.040, the board must consider whether the county, city, or town  
9 planning under RCW 36.70A.040 in whose planning jurisdiction the  
10 proposed facility is located has adopted a comprehensive plan and  
11 development regulations as required by RCW 36.70A.040.

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

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

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

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

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

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

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

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

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

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

39 ~~(j) Whether the project is the acquisition, expansion,  
40 improvement, or renovation by a local government of a public water~~

1 ~~system that is in violation of health and safety standards, including~~  
2 ~~the cost of extending existing service to such a system;~~

3 ~~(k) Except as otherwise conditioned by RCW 43.155.120, and~~  
4 ~~effective one calendar year following the development of model~~  
5 ~~evergreen community management plans and ordinances under RCW~~  
6 ~~35.105.050, whether the entity receiving assistance has been~~  
7 ~~recognized, and what gradation of recognition was received, in the~~  
8 ~~evergreen community recognition program created in RCW 35.105.030;~~

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

13 ~~(m) Other criteria that the board considers advisable.~~

14 ~~(5) For the 2015-2017 fiscal biennium, in place of the criteria,~~  
15 ~~ranking, and submission processes for construction loan lists~~  
16 ~~provided in subsections (4) and (7) of this section:)~~

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

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

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

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

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

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

30 (vi) Whether the project consolidates or regionalizes systems;

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

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

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

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

40 (A) Efficient use of state resources;

- 1 (B) Preservation and enhancement of health and safety;  
2 (C) Abatement of pollution and protection of the environment;  
3 (D) Creation of new, family-wage jobs, and avoidance of shifting  
4 existing jobs from one Washington state community to another;  
5 (E) Fostering economic development consistent with chapter 36.70A  
6 RCW;  
7 (F) Efficiency in delivery of goods and services, public transit,  
8 and transportation;  
9 (G) Avoidance of additional costs to state and local governments  
10 that adversely impact local residents and small businesses; and  
11 (H) Reduction of the overall cost of public infrastructure; and  
12 (xi) Other criteria that the board considers necessary to achieve  
13 the purposes of this chapter.

14 (b) Before November (~~(1, 2016)~~) 1st of each year, the board must  
15 develop and submit to the appropriate fiscal committees of the senate  
16 and house of representatives a numerically ranked list of qualified  
17 public works projects which have been evaluated by the board and are  
18 recommended for funding by the legislature. The maximum amount of  
19 funding that the board may recommend for any jurisdiction is ten  
20 million dollars per biennium. For each project on the numerically  
21 ranked list, as well as for eligible projects not recommended for  
22 funding, the board must document the numerical ranking that was  
23 assigned.

24 (~~((6))~~) (5) Existing debt or financial obligations of local  
25 governments may not be refinanced under this chapter. Each local  
26 government applicant must provide documentation of attempts to secure  
27 additional local or other sources of funding for each public works  
28 project for which financial assistance is sought under this chapter.

29 (~~((7) Before November 1st of each even-numbered year, the board~~  
30 ~~must develop and submit to the appropriate fiscal committees of the~~  
31 ~~senate and house of representatives a description of the loans made~~  
32 ~~under RCW 43.155.065, 43.155.068, and subsection (10) of this section~~  
33 ~~during the preceding fiscal year and a prioritized list of projects~~  
34 ~~which are recommended for funding by the legislature, including one~~  
35 ~~copy to the staff of each of the committees. The list must include,~~  
36 ~~but not be limited to, a description of each project and recommended~~  
37 ~~financing, the terms and conditions of the loan or financial~~  
38 ~~guarantee, the local government jurisdiction and unemployment rate,~~  
39 ~~demonstration of the jurisdiction's critical need for the project and~~  
40 ~~documentation of local funds being used to finance the public works~~



1 ~~project. The list must also include measures of fiscal capacity for~~  
2 ~~each jurisdiction recommended for financial assistance, compared to~~  
3 ~~authorized limits and state averages, including local government~~  
4 ~~sales taxes; real estate excise taxes; property taxes; and charges~~  
5 ~~for or taxes on sewerage, water, garbage, and other utilities.~~

6 ~~(8))~~ (6) The board may not sign contracts or otherwise  
7 financially obligate funds from the public works assistance account  
8 before the legislature has appropriated funds for a specific list of  
9 public works projects. The legislature may remove projects from the  
10 list recommended by the board. The legislature may not change the  
11 order of the priorities recommended for funding by the board.

12 ~~((9))~~ (7) Subsection ~~((8))~~ (6) of this section does not apply  
13 to loans made under RCW 43.155.065, 43.155.068, and subsection  
14 ~~((10))~~ (8) of this section.

15 ~~((10))~~ (8) Loans made for the purpose of capital facilities  
16 plans are exempted from subsection ~~((8))~~ (6) of this section.

17 ~~((11))~~ (9) To qualify for loans or pledges for solid waste or  
18 recycling facilities under this chapter, a city or county must  
19 demonstrate that the solid waste or recycling facility is consistent  
20 with and necessary to implement the comprehensive solid waste  
21 management plan adopted by the city or county under chapter 70.95  
22 RCW.

23 ~~((12))~~ (10) After January 1, 2010, any project designed to  
24 address the effects of storm water or wastewater on Puget Sound may  
25 be funded under this section only if the project is not in conflict  
26 with the action agenda developed by the Puget Sound partnership under  
27 RCW 90.71.310.

28 ~~((13) During the 2015-2017 fiscal biennium,))~~ (11) For projects  
29 involving repair, replacement, or improvement of a wastewater  
30 treatment plant or other public works facility for which an  
31 investment grade efficiency audit is obtainable, the public works  
32 board must require as a contract condition that the project sponsor  
33 undertake an investment grade efficiency audit. The project sponsor  
34 may finance the costs of the audit as part of its public works  
35 assistance account program loan.

36 ~~((14)(a) For public works assistance account application rounds~~  
37 ~~conducted during the 2015-2017 fiscal biennium,))~~ (12) The board must  
38 implement policies and procedures designed to maximize local  
39 government use of federal funds to finance local infrastructure  
40 including, but not limited to, drinking water and clean water state

1 revolving funds operated by the state departments of health and  
2 ecology. ((Projects that are eligible for the drinking water and  
3 clean water state revolving funds may receive public works board  
4 preconstruction loans. Projects that are eligible for the drinking  
5 water and clean water state revolving funds are not eligible for  
6 public works board construction loans. For purposes of this  
7 subsection "eligible for drinking water and clean water state  
8 revolving funds" means:

9 (i) Projects that have applied to the state revolving funds and  
10 are awaiting a funding decision;

11 (ii) Projects that have been rejected for funding solely due to  
12 not meeting readiness requirements; and

13 (iii) Projects that have not applied, but would likely be  
14 eligible if the project applied and met the project readiness  
15 requirements.

16 (b) For all construction loan projects proposed to the  
17 legislature for funding during the 2015-2017 fiscal biennium, the  
18 board must base interest rates on the average daily market interest  
19 rate for tax exempt municipal bonds as published in the bond buyer's  
20 index for the period from sixty to thirty days before the start of  
21 the application cycle. For projects with a repayment period between  
22 five and twenty years, the rate must be sixty percent of the market  
23 rate. For projects with a repayment period under five years, the rate  
24 must be thirty percent of the market rate. The board must also  
25 provide reduced interest rates, extended repayment periods, or  
26 forgivable principal loans for projects that meet financial hardship  
27 criteria as measured by the affordability index or similar standard  
28 measure of financial hardship.))

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.155  
30 RCW to read as follows:

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

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