
SUBSTITUTE SENATE BILL 5223

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Fraser and Brandland; by request of Office of Financial Management)

READ FIRST TIME 04/26/09.

1 AN ACT Relating to state bonds and related accounts; amending RCW
2 47.10.867 and 47.56.850; adding new sections to chapter 47.10 RCW;
3 adding a new chapter to Title 43 RCW; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** For the purpose of providing funds to
6 finance the projects described and authorized by the legislature in the
7 capital and operating appropriations acts for the 2007-2009 and
8 2009-2011 fiscal bienniums, and all costs incidental thereto, the state
9 finance committee is authorized to issue general obligation bonds of
10 the state of Washington in the sum of two billion two hundred nineteen
11 million dollars, or as much thereof as may be required, to finance
12 these projects and all costs incidental thereto. Bonds authorized in
13 this section may be sold at such price as the state finance committee
14 shall determine. No bonds authorized in this section may be offered
15 for sale without prior legislative appropriation of the net proceeds of
16 the sale of the bonds.

17 NEW SECTION. **Sec. 2.** The proceeds from the sale of the bonds

1 authorized in section 1 of this act shall be deposited in the state
2 building construction account created by RCW 43.83.020. The proceeds
3 shall be transferred as follows:

4 (1) One billion nine hundred forty-seven million dollars to remain
5 in the state building construction account created by RCW 43.83.020;

6 (2) Twenty-seven million dollars to the outdoor recreation account
7 created by RCW 79A.25.060;

8 (3) Twenty-seven million dollars to the habitat conservation
9 account created by RCW 79A.15.020;

10 (4) Six million dollars to the riparian protection account created
11 by RCW 79A.15.120;

12 (5) Ten million dollars to the farmlands preservation account
13 created by RCW 79A.15.130;

14 (6) One hundred fifty-nine million dollars to the state taxable
15 building construction account. All receipts from taxable bond issues
16 are to be deposited into the account. If the state finance committee
17 deems it necessary or advantageous to issue more than the amount
18 specified in this subsection (6) as taxable bonds in order to comply
19 with federal internal revenue service rules and regulations pertaining
20 to the use of nontaxable bond proceeds or in order to reduce the total
21 financing costs for bonds issued, the proceeds of such additional
22 taxable bonds shall be transferred to the state taxable building
23 construction account in lieu of any transfer otherwise provided by this
24 section. The state treasurer shall submit written notice to the
25 director of financial management if it is determined that any such
26 additional transfer to the state taxable building construction account
27 is necessary. Moneys in the account may be spent only after
28 appropriation.

29 These proceeds shall be used exclusively for the purposes specified
30 in this section and for the payment of expenses incurred in the
31 issuance and sale of the bonds issued for the purposes of this section,
32 and shall be administered by the office of financial management subject
33 to legislative appropriation.

34 NEW SECTION. **Sec. 3.** (1) The debt-limit general fund bond
35 retirement account shall be used for the payment of the principal of
36 and interest on the bonds authorized in section 2 (1), (2), (3), (4),
37 (5), and (6) of this act.

1 (2) The state finance committee shall, on or before June 30th of
2 each year, certify to the state treasurer the amount needed in the
3 ensuing twelve months to meet the bond retirement and interest
4 requirements on the bonds authorized in section 2 (1), (2), (3), (4),
5 (5), and (6) of this act.

6 (3) On each date on which any interest or principal and interest
7 payment is due on bonds issued for the purposes of section 2 (1), (2),
8 (3), (4), (5), and (6) of this act the state treasurer shall withdraw
9 from any general state revenues received in the state treasury and
10 deposit in the debt-limit general fund bond retirement account an
11 amount equal to the amount certified by the state finance committee to
12 be due on the payment date.

13 NEW SECTION. **Sec. 4.** (1) Bonds issued under sections 1 through 3
14 of this act shall state that they are a general obligation of the state
15 of Washington, shall pledge the full faith and credit of the state to
16 the payment of the principal thereof and the interest thereon, and
17 shall contain an unconditional promise to pay the principal and
18 interest as the same shall become due.

19 (2) The owner and holder of each of the bonds or the trustee for
20 the owner and holder of any of the bonds may by mandamus or other
21 appropriate proceeding require the transfer and payment of funds as
22 directed in this section.

23 NEW SECTION. **Sec. 5.** The legislature may provide additional means
24 for raising moneys for the payment of the principal of and interest on
25 the bonds authorized in section 1 of this act, and sections 2 and 3 of
26 this act shall not be deemed to provide an exclusive method for the
27 payment.

28 **Sec. 6.** RCW 47.10.867 and 2003 c 147 s 7 are each amended to read
29 as follows:

30 For the purpose of providing funds for the planning, design,
31 construction, reconstruction, and other necessary costs for
32 transportation projects, the state finance committee is authorized to
33 issue general obligation bonds of the state of Washington in the sum of
34 (~~three~~) two hundred forty-nine million five hundred thousand dollars,
35 or as much thereof as may be required, to finance these projects and

1 all costs incidental thereto. Bonds authorized in this section may be
2 sold at such price as the state finance committee shall determine. No
3 bonds authorized in this section may be offered for sale without prior
4 legislative appropriation of the net proceeds of the sale of the bonds.

5 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute
6 a new chapter in Title 43 RCW.

7 NEW SECTION. **Sec. 8.** In order to provide funds necessary for the
8 location, design, right-of-way, and construction of the state route
9 number 520 corridor projects, as allowed in section 2, chapter . . .
10 (Engrossed Substitute House Bill No. 2211), Laws of 2009, there shall
11 be issued and sold upon the request of the department of transportation
12 a total of one billion nine hundred fifty million dollars of general
13 obligation bonds of the state of Washington first payable from toll
14 revenue and excise taxes on motor vehicle and special fuels in
15 accordance with section 12 of this act.

16 NEW SECTION. **Sec. 9.** Upon the request of the department of
17 transportation, the state finance committee shall supervise and provide
18 for the issuance, sale, and retirement of the bonds authorized by this
19 act in accordance with chapter 39.42 RCW. Bonds authorized by this act
20 shall be sold in the manner, at time or times, in amounts, and at the
21 price as the state finance committee shall determine. No bonds may be
22 offered for sale without prior legislative appropriation of the net
23 proceeds of the sale of the bonds.

24 NEW SECTION. **Sec. 10.** The proceeds from the sale of bonds
25 authorized by this act shall be deposited in the state route number 520
26 corridor account created under section 4, chapter . . . (Engrossed
27 Substitute House Bill No. 2211), Laws of 2009, and shall be available
28 only for the purposes enumerated in section 8 of this act, for the
29 payment of bond anticipation notes or other interim financing, if any,
30 capitalizing interest on the bonds, and for the payment of bond
31 issuance costs, including the costs of underwriting.

32 NEW SECTION. **Sec. 11.** The toll facility bond retirement account
33 is created in the state treasury for the purpose of payment of the

1 principal of and interest and premium on bonds. Both principal of and
2 interest on the bonds issued for the purposes of this act shall be
3 payable from the toll facility bond retirement account. The state
4 finance committee may provide that special subaccounts be created in
5 the account to facilitate payment of the principal of and interest on
6 the bonds. The state finance committee shall, on or before June 30th
7 of each year, certify to the state treasurer the amount required for
8 principal and interest on the bonds in accordance with the bond
9 proceedings.

10 NEW SECTION. **Sec. 12.** Bonds issued under the authority of this
11 section and sections 8, 13, and 14 of this act shall distinctly state
12 that they are a general obligation of the state of Washington, shall
13 pledge the full faith and credit of the state to the payment of the
14 principal thereof and the interest thereon, and shall contain an
15 unconditional promise to pay such principal and interest as the same
16 shall become due. The principal of and interest on the bonds shall be
17 first payable in the manner provided in this section and sections 8,
18 13, and 14 of this act from toll revenue and then from proceeds of
19 excise taxes on motor vehicle and special fuels to the extent toll
20 revenue is not available for that purpose. Toll revenue and the state
21 excise taxes on motor vehicle and special fuels imposed by chapters
22 82.36 and 82.38 RCW are hereby pledged to the payment of any bonds and
23 the interest thereon issued under the authority of this section and
24 sections 8, 13, and 14 of this act, and the legislature agrees to
25 continue to impose these toll charges on the state route number 520
26 corridor, and on any other eligible toll facility designated by the
27 legislature and on which the imposition of tolls is authorized by the
28 legislature in respect of the bonds, and excise taxes on motor vehicle
29 and special fuels in amounts sufficient to pay, when due, the principal
30 and interest on all bonds issued under the authority of this section
31 and sections 8, 13, and 14 of this act.

32 NEW SECTION. **Sec. 13.** For bonds issued under the authority of
33 this section and sections 8, 12, and 14 of this act, the state
34 treasurer shall first withdraw toll revenue from the state route number
35 520 corridor account created under section 4, chapter . . . (Engrossed
36 Substitute House Bill No. 2211), Laws of 2009, and, to the extent toll

1 revenue is not available, excise taxes on motor vehicle and special
2 fuels in the motor vehicle fund and deposit in the toll facility bond
3 retirement account, or a special subaccount in the account, such
4 amounts, and at such times, as are required by the bond proceedings.

5 Any excise taxes on motor vehicle and special fuels required for
6 bond retirement or interest on the bonds authorized by this section and
7 sections 8, 12, and 14 of this act shall be taken from that portion of
8 the motor vehicle fund that results from the imposition of excise taxes
9 on motor vehicle and special fuels and which is, or may be,
10 appropriated to the department for state highway purposes. Funds
11 required shall never constitute a charge against any other allocations
12 of motor vehicle fuel and special fuel tax revenues to the state,
13 counties, cities, and towns unless the amount arising from excise taxes
14 on motor vehicle and special fuels distributed to the state in the
15 motor vehicle fund proves insufficient to meet the requirements for
16 bond retirement or interest on any such bonds.

17 Any payments for bond retirement or interest on the bonds taken
18 from other revenues from the motor vehicle fuel or special fuel taxes
19 that are distributable to the state, counties, cities, and towns shall
20 be repaid from available toll revenue in the manner provided in the
21 bond proceedings or, if toll revenue is not available for that purpose,
22 from the first excise taxes on motor vehicle and special fuels
23 distributed to the motor vehicle fund not required for bond retirement
24 or interest on the bonds. Any excise taxes on motor vehicle and
25 special fuels required for bond retirement or interest on the bonds
26 authorized by this section and sections 8, 12, and 14 of this act shall
27 be reimbursed to the motor vehicle fund from toll revenue in the manner
28 and with the priority specified in the bond proceedings.

29 NEW SECTION. **Sec. 14.** Bonds issued under the authority of
30 sections 8, 12, and 13 of this act and this section and any other
31 general obligation bonds of the state of Washington that have been or
32 that may be authorized and that pledge motor vehicle and special fuels
33 excise taxes for the payment of principal and interest thereon shall be
34 an equal charge against the revenues from such motor vehicle and
35 special fuels excise taxes.

1 **Sec. 15.** RCW 47.56.850 and 2008 c 122 s 7 are each amended to read
2 as follows:

3 (1) Unless these powers are otherwise delegated by the legislature,
4 the transportation commission is the tolling authority for the state.
5 The tolling authority shall:

6 (a) Set toll rates, establish appropriate exemptions, if any, and
7 make adjustments as conditions warrant on eligible toll facilities;

8 (b) Review toll collection policies, toll operations policies, and
9 toll revenue expenditures on the eligible toll facilities and report
10 annually on this review to the legislature.

11 (2) The tolling authority, in determining toll rates, shall
12 consider the policy guidelines established in RCW 47.56.830.

13 (3) Unless otherwise directed by the legislature, in setting and
14 periodically adjusting toll rates, the tolling authority must ensure
15 that toll rates will generate revenue sufficient to:

16 (a) Meet the operating costs of the eligible toll facilities,
17 including necessary maintenance, preservation, renewal, replacement,
18 administration, and toll enforcement by public law enforcement;

19 (b) Meet obligations for the ~~((repayment))~~ timely payment of debt
20 ~~((and interest on the))~~ service on bonds issued for eligible toll
21 facilities, and any other associated financing costs including, but not
22 limited to, required reserves, minimum debt coverage or other
23 appropriate contingency funding, ~~((and))~~ insurance, and compliance with
24 all other financial and other covenants made by the state in the bond
25 proceedings; ~~((and))~~

26 (c) Meet obligations to reimburse the motor vehicle fund for excise
27 taxes on motor vehicle and special fuels applied to the payment of
28 bonds issued for eligible toll facilities; and

29 (d) Meet any other obligations of the tolling authority to provide
30 its proportionate share of funding contributions for any projects or
31 operations of the eligible toll facilities.

32 (4) The established toll rates may include variable pricing, and
33 should be set to optimize system performance, recognizing necessary
34 trade-offs to generate revenue for the purposes specified in subsection
35 (3) of this section. Tolls may vary for type of vehicle, time of day,
36 traffic conditions, or other factors designed to improve performance of
37 the system.

1 (5) In fixing and adjusting toll rates under this section, the only
2 toll revenue to be taken into account must be toll revenue pledged to
3 bonds that includes toll receipts, and the only debt service
4 requirements to be taken into account must be debt service on bonds
5 payable from and secured by toll revenue that includes toll receipts.

6 (6) The legislature pledges to appropriate toll revenue as
7 necessary to carry out the purposes of this section. When the
8 legislature has specifically identified and designated an eligible toll
9 facility and authorized the issuance of bonds for the financing of the
10 eligible toll facility that are payable from and secured by a pledge of
11 toll revenue, the legislature further agrees for the benefit of the
12 owners of outstanding bonds issued by the state for eligible toll
13 facilities to continue in effect and not to impair or withdraw the
14 authorization of the tolling authority to fix and adjust tolls as
15 provided in this section. The state finance committee shall pledge the
16 state's obligation to impose and maintain tolls, together with the
17 application of toll revenue as described in this section, to the owners
18 of any bonds.

19 NEW SECTION. Sec. 16. If and to the extent that the state finance
20 committee determines, in consultation with the department of
21 transportation and the tolling authority, that it will be beneficial
22 for the state to issue any bonds authorized in sections 8 and 12
23 through 14 of this act as toll revenue bonds rather than as general
24 obligation bonds, the state finance committee is authorized to issue
25 and sell, upon the request of the department of transportation, such
26 bonds as toll revenue bonds and not as general obligation bonds.
27 Notwithstanding section 12 of this act, each such bond shall contain a
28 recital that payment or redemption of the bond and payment of the
29 interest and any premium thereon is payable solely from and secured
30 solely by a direct pledge, charge, and lien upon toll revenue and is
31 not a general obligation of the state to which the full faith and
32 credit of the state is pledged.

33 Toll revenue is hereby pledged to the payment of any bonds and the
34 interest thereon issued under the authority of this section, and the
35 legislature agrees to continue to impose these toll charges on the
36 state route number 520 corridor, and on any other eligible toll
37 facility designated by the legislature and on which the imposition of

1 tolls is authorized by the legislature in respect of the bonds, in
2 amounts sufficient to pay, when due, the principal and interest on all
3 bonds issued under the authority of this section.

4 NEW SECTION. **Sec. 17.** The state finance committee may determine
5 and include in any resolution authorizing the issuance of any bonds
6 under this act, such terms, provisions, covenants, and conditions as it
7 may deem appropriate in order to assist with the marketing and sale of
8 the bonds, confer rights upon the owners of bonds, and safeguard rights
9 of the owners of bonds including, among other things:

10 (1) Provisions regarding the maintenance and operation of eligible
11 toll facilities;

12 (2) The pledges, uses, and priorities of application of toll
13 revenue;

14 (3) Provisions that bonds shall be payable from and secured solely
15 by toll revenue as provided by section 16 of this act, or shall be
16 payable from and secured by both toll revenue and by a pledge of excise
17 taxes on motor vehicle and special fuels and the full faith and credit
18 of the state as provided in sections 8 and 12 through 14 of this act;

19 (4) In consultation with the department of transportation and the
20 tolling authority, financial covenants requiring that the eligible toll
21 facilities must produce specified coverage ratios of toll revenue to
22 debt service on bonds;

23 (5) The purposes and conditions that must be satisfied prior to the
24 issuance of any additional bonds that are to be payable from and
25 secured by any toll revenue on an equal basis with previously issued
26 and outstanding bonds payable from and secured by toll revenue;

27 (6) Provisions that bonds for which any toll revenue are pledged,
28 or for which a pledge of any toll revenue may be reserved, may be
29 structured on a senior, parity, subordinate, or special lien basis in
30 relation to any other bonds for which toll revenue is pledged, with
31 respect to toll revenue only; and

32 (7) Provisions regarding reserves, credit enhancement, liquidity
33 facilities, and payment agreements with respect to bonds.

34 Notwithstanding the foregoing, covenants and conditions detailing
35 the character of management, maintenance, and operation of eligible
36 toll facilities, insurance for eligible toll facilities, financial

1 management of toll revenue, and disposition of eligible toll facilities
2 must first be approved by the department of transportation.

3 The owner of any bond may by mandamus or other appropriate
4 proceeding require and compel performance of any duties imposed upon
5 the tolling authority and the department of transportation and their
6 respective officials, including any duties imposed upon or undertaken
7 by them or by their respective officers, agents, and employees, in
8 connection with the construction, maintenance, and operation of
9 eligible toll facilities and in connection with the collection,
10 deposit, investment, application, and disbursement of the proceeds of
11 the bonds and toll revenue.

12 NEW SECTION. **Sec. 18.** (1) For the purposes of this act, "toll
13 revenue" means all toll receipts, all interest income derived from the
14 investment of toll receipts, and any gifts, grants, or other funds
15 received for the benefit of eligible toll facilities. However, for the
16 purpose of any pledge of toll revenue to the payment of particular
17 bonds issued under this act, "toll revenue" means and includes only
18 such toll revenue or portion thereof that is pledged to the payment of
19 those bonds in the resolution authorizing the issuance of such bonds.
20 Toll revenue constitutes "fees and revenues derived from the ownership
21 or operation of any undertaking, facility, or project" as that phrase
22 is used in Article VIII, section 1(c)(1) of the state Constitution.

23 (2) For the purposes of this act, "tolling authority" has the same
24 meaning as in RCW 47.56.810.

25 NEW SECTION. **Sec. 19.** Sections 8 through 14 and 16 through 18 of
26 this act are each added to chapter 47.10 RCW.

27 NEW SECTION. **Sec. 20.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

--- END ---