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**SUBSTITUTE SENATE BILL 5618**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Chase, Kline, and Hobbs; by request of Washington State Housing Finance Commission)

READ FIRST TIME 02/18/11.

1 AN ACT Relating to limiting private activity bond issues by out-of-  
2 state issuers; amending RCW 39.46.020 and 39.86.140; and adding a new  
3 section to chapter 39.46 RCW.

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

5 **Sec. 1.** RCW 39.46.020 and 2001 c 299 s 15 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Bond" means any agreement which may or may not be represented  
10 by a physical instrument, including notes, warrants, or certificates of  
11 indebtedness, that evidences an indebtedness of the state or a local  
12 government or a fund thereof, where the state or local government  
13 agrees to pay a specified amount of money, with or without interest, at  
14 a designated time or times to either registered owners or bearers,  
15 including debt issued under chapter 39.50 RCW.

16 (2) "Host approval" means an approval of an issue of bonds by an  
17 applicable elected representative of the state or local government,  
18 having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the

1 internal revenue code, over the area in which a facility is located  
2 that is to be financed with bonds issued by an issuer that is not the  
3 state or a local government.

4 (3) "Local government" means any county, city, town, special  
5 purpose district, political subdivision, municipal corporation, or  
6 quasi municipal corporation, including any public corporation created  
7 by such an entity.

8 ((+3)) (4) "Obligation" means an agreement that evidences an  
9 indebtedness of the state or a local government, other than a bond, and  
10 includes, but is not limited to, conditional sales contracts, lease  
11 obligations, and promissory notes.

12 ((+4)) (5) "State" includes the state, agencies of the state, and  
13 public corporations created by the state or agencies of the state.

14 ((+5)) (6) "Treasurer" means the state treasurer, county  
15 treasurer, city treasurer, or treasurer of any other municipal  
16 corporation.

17 NEW SECTION. Sec. 2. A new section is added to chapter 39.46 RCW  
18 to read as follows:

19 (1) It is the policy of this state that in order to maintain an  
20 effective system of monitoring the use of federal subsidies within the  
21 state, facilities within the state proposed to be financed with bonds  
22 issued by an issuer formed or organized under the laws of another state  
23 must receive prior approval from the statewide issuer authorized by the  
24 laws of Washington to issue bonds for the proposed project in  
25 accordance with this section.

26 (2)(a) At least one hundred twenty days prior to the public hearing  
27 for the proposed issuance of bonds for a project located in this state  
28 by an issuer formed or organized under the laws of another state, the  
29 issuer must notify the statewide issuer authorized under the laws of  
30 Washington to issue bonds for the proposed project and provide the  
31 information required under (b) of this subsection.

32 (b) The following items and information must be received by the  
33 statewide issuer authorized under the laws of Washington to issue bonds  
34 for the proposed project:

35 (i) A copy of the proposed notice of public hearing pertaining to  
36 the facilities, providing the date and location of the proposed  
37 hearing;

- 1 (ii) The maximum stated principal amount of the bonds;
- 2 (iii) A description of the facility, including its location;
- 3 (iv) A description of the plan of finance;
- 4 (v) The name of the issuer of the bonds;
- 5 (vi) The name of the initial owner or principal user of the
- 6 facility;
- 7 (vii) A description of how the project will meet the public policy
- 8 requirements and objectives of this state including the policies of the
- 9 statewide issuer under Washington law; and
- 10 (viii) A check in the amount established by the statewide issuer
- 11 under Washington law to perform the review.
- 12 (c) If the statewide issuer authorized to issue the bonds under
- 13 Washington law determines that the facility and the items and
- 14 information submitted under (b) of this subsection are consistent with
- 15 the laws and public policy of the state and are in the best interest of
- 16 the state, then the statewide issuer shall issue a written approval
- 17 under this section authorizing the governmental unit to grant its host
- 18 approval of the public hearing in its discretion.
- 19 (d) If the statewide issuer authorized to issue the bonds under
- 20 Washington law determines that the facility and the items and
- 21 information submitted under (b) of this subsection are not consistent
- 22 with the laws and public policy of the state and are not in the best
- 23 interest of the state, then the public hearing may not proceed and the
- 24 bonds may not be issued by an issuer formed or organized under the laws
- 25 of another state.

26 **Sec. 3.** RCW 39.86.140 and 2010 1st sp.s. c 6 s 8 are each amended  
27 to read as follows:

28 (1) No issuer may receive an allocation of the state ceiling  
29 without a certificate of approval from the agency. The agency may not  
30 make an allocation of the state ceiling to an issuer formed or  
31 organized under the laws of another state.

32 (2) For each state ceiling allocation request, an issuer shall  
33 submit to the agency, no sooner than ninety days prior to the beginning  
34 of a calendar year for which an allocation of the state ceiling is  
35 being requested, a form identifying:

- 36 (a) The amount of the allocation sought;

1 (b) The bond use category from which the allocation sought would be  
2 made;

3 (c) The project or program for which the allocation is requested;

4 (d) The financing schedule for which the allocation is needed; and

5 (e) Any other such information required by the agency, including  
6 information which corresponds to the allocation criteria of RCW  
7 39.86.130.

8 (3) The agency may approve or deny an allocation for all or a  
9 portion of the issuer's request. Any denied request, however, shall  
10 remain on file with the agency for the remainder of the calendar year  
11 and shall be considered for receiving any allocation, reallocation, or  
12 carryforward of unused portions of the state ceiling during that  
13 period.

14 (4) After receiving an allocation request, the agency shall mail to  
15 the requesting issuer a written certificate of approval or notice of  
16 denial for an allocation amount, by a date no later than the latest of  
17 the following:

18 (a) February 1st of the calendar year for which the request is  
19 made;

20 (b) Fifteen days from the date the agency receives an allocation  
21 request; or

22 (c) Fifteen days from the date the agency receives a recommendation  
23 by the board with regard to a small issue allocation request, should  
24 the board choose to review individual requests.

25 (5)(a) For requests of the state ceiling of any calendar year, the  
26 following applies to all bond use categories except housing and student  
27 loans:

28 (i) Except for housing and student loans, any allocations granted  
29 prior to April 1st, for which bonds have not been issued by July 1st of  
30 the same calendar year, shall revert to the agency on July 1st of the  
31 same calendar year for reallocation unless an extension or carryforward  
32 is granted;

33 (ii) Except for housing and student loans, any allocations granted  
34 on or after April 1st, for which bonds have not been issued by October  
35 15th of the same calendar year, shall revert to the agency on October  
36 15th of the same calendar year for reallocation unless an extension or  
37 carryforward is granted.

1 (b) For each calendar year, any housing or student loan  
2 allocations, for which bonds have not been issued by December 15th of  
3 the same calendar year, shall revert to the agency on December 15th of  
4 the same calendar year for reallocation unless an extension or  
5 carryforward is granted.

6 (6) An extension of the deadlines provided by subsection (5) of  
7 this section may be granted by the agency for the approved allocation  
8 amount or a portion thereof, based on:

9 (a) Firm and convincing evidence that the bonds will be issued  
10 before the end of the calendar year if the extension is granted; and

11 (b) Any other criteria the agency deems appropriate.

12 (7) If an issuer determines that bonds subject to the state ceiling  
13 will not be issued for the project or program for which an allocation  
14 was granted, the issuer shall promptly notify the agency in writing so  
15 that the allocation may be canceled and the amount may be available for  
16 reallocation.

17 (8) Bonds subject to the state ceiling may be issued only to  
18 finance the project or program for which a certificate of approval is  
19 granted.

20 (9) Within three business days of the date that bonds for which an  
21 allocation of the state ceiling is granted have been delivered to the  
22 original purchasers, the issuer shall mail to the agency a written  
23 notification of the bond issuance. In accordance with chapter 39.44  
24 RCW, the issuer shall also complete bond issuance information on the  
25 form provided by the agency.

26 (10) If the total amount of bonds issued under the authority of a  
27 state ceiling for a project or program is less than the amount  
28 allocated, the remaining portion of the allocation shall revert to the  
29 agency for reallocation in accordance with the criteria in RCW  
30 39.86.130. If the amount of bonds actually issued under the authority  
31 of a state ceiling is greater than the amount allocated, the entire  
32 allocation shall be disallowed.

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