

## Referendum Bill

## 52

Proposed to the people by the Legislature:

## The legislature has passed Engrossed House Bill No. 2561, concerning authorizing and funding bonds for energy efficiency projects in schools.

**This bill would authorize bonds to finance construction and repair projects increasing energy efficiency in public schools and higher education buildings, and continue the sales tax on bottled water otherwise expiring in 2013.**

Should this bill be:

Approved

Rejected

**Votes cast by the 2010 Legislature on final passage:**

Senate: Yeas, 28; Nays, 18; Absent, 0; Excused, 3

House: Yeas, 59; Nays, 38; Absent, 0; Excused, 1

The Official Ballot Title and the Explanatory Statement were written by the Attorney General as required by law. The Fiscal Impact Statement was written by the Office of Financial Management as required by law. The Secretary of State is not responsible for the content of arguments or statements (WAC 434-381-180). The complete text of Referendum Bill 52 begins on page 97.



### You are voting to Approve or Reject the bill passed by the Legislature

**Approve** – you *favor* the bill passed by the Legislature.

**Reject** – you *don't favor* the bill passed by the Legislature.

## Explanatory Statement

Written by the Office of the Attorney General

### The Law as it Presently Exists

The State of Washington issues bonds as one way of borrowing money for various public purposes. Bonds are written agreements, under which the state agrees to pay the borrowed money back over a stated period of time, with interest. One type of bond is referred to as a “general obligation bond,” which means that the state promises to repay the bonds from its general revenues, rather than from a dedicated source of revenue. The state pledges its full faith and credit toward the repayment of general obligation bonds. The state constitution limits the amount of money the state can borrow, except for debt approved by the voters.

The state receives revenue in the form of taxes, including the state sales tax. The sales tax currently applies to most purchases of bottled water. The law makes exceptions for bottled water that is sold for certain medical purposes, or to people who do not otherwise have a readily available source of clean water. Current law also provides that the application of the sales tax to bottled water will expire July 1, 2013, and after that date the sales tax will no longer apply to purchases of bottled water.

### The Effect of the Proposed Referendum, if Approved

This measure asks the voters to approve the state's issuance of general obligation bonds to pay for certain construction and repair projects to improve energy efficiency in public schools and in higher education buildings. The measure would authorize the state to borrow \$505 million by issuing bonds to be repaid from future revenue.

The money raised by selling the bonds would be deposited into the state treasury, and would be used to make financial grants to public school districts, public universities, colleges and community colleges, and other public agencies. The grants would be used to pay for capital improvements for energy, utility, and operational cost savings.

Grants would be awarded on a competitive basis, based on applications explaining what particular projects applicants propose to use the money to achieve. Grants would be awarded in competitive



rounds, with at least five percent of the money in each round awarded to small public school districts with fewer than one thousand students. Each project would be weighted, based on: (a) the availability of nonstate money to assist in funding the project; (b) the energy savings to be achieved by the project; and (c) how quickly the project could be ready to proceed. The dollar amounts awarded for each project would be determined in order to fund the maximum number of projects with the greatest energy and cost benefit. Only eight-five percent of projects for which applications are submitted could be funded in each round, until the last round.

General state revenues would be used to repay the bonds. If the voters approve this measure, then an amendment to state law would take effect that removes the expiration date for applying the state sales tax to purchases of bottled water. This would have the effect of continuing the collection of sales tax on purchases of bottled water after July 1, 2013, when that tax would otherwise expire. This measure states that the legislature intends to increase state revenue in this way in order to pay for a portion of the costs of repaying the bonds authorized by this measure.

## Fiscal Impact Statement

Written by the Office of Financial Management

### Fiscal Impact

Referendum 52 authorizes the issuance of \$505 million in state general obligation bonds to fund capital improvements for energy efficiency in buildings owned by public school districts and public higher education institutions. Twenty-nine-year debt service costs are estimated to total \$937 million, for an average annual state cost of \$32.3 million. Other state costs are estimated to be \$2.2 million annually through fiscal year 2015. The sales tax on bottled water is estimated to increase State General Fund revenues an annual average of \$39.8 million and increase local government revenues an annual average of \$14.9 million.

### General Assumptions

Estimates are based on information provided by state agencies during the 2010 legislative session for Engrossed House Bill 2561 (EHB 2561) and updated to the June 2010 Washington State Economic and Revenue Forecast.

Removing the expiration of sales tax on bottled water is contingent on approval of the referendum.

Estimates are described using the state's fiscal year of July 1 through June 30.

### State and Local Revenues and Expenditures Estimate Assumptions

The state will obtain \$503.3 million in funds (bond proceeds) over five fiscal years from the issuance of \$505 million in state general obligation bonds. Bond issuance schedule assumptions are from the Washington State Department of Commerce. (See page 46, Figure 6.1.)

Bond funds will be expended as grants to public school districts and public higher education institutions through a competitive process. The following data are the estimated state grant expenditures and corresponding increased revenue to public school districts and public higher education institutions. The estimated expenditures are not reduced for allowable state agency administrative fees.

An estimated 2,049 buildings owned by 295 public school districts and 1,440 buildings owned by 40 public higher education institutions, for a total of 3,489 buildings, may be eligible for grants. Data are from the Washington State Department of General Administration, Higher Education Coordinating Board and Office of Superintendent of Public Instruction. At least 5 percent of the total grant amount must be awarded to public school districts with fewer than 1,000 full-time equivalent students. (See page 46, Figure 6.2.)

Referendum 52 would remove the June 30, 2013, expiration of the sales tax on bottled water. State revenues are estimated to increase by an annual average of \$39,808,600 and local revenues are estimated to increase by an annual average of \$14,868,600. Revenue estimates are based on state consumption and sales data contained in the 2008 Beverage Digest Fact Book. Local revenues are a statewide estimate based on an assumption of a 2.392 percent statewide average local sales tax rate.

State revenues deposited in the State General Fund can be used for any governmental purpose, including payment of state bond debt service costs. Revenue will increase for local jurisdictions authorized to impose a sales tax (counties, cities, transit, etc.); the local sales tax revenue must be

used as allowed by state law. Total state and local government revenue impacts are summarized in Figure 6.3, page 46.

### **State and Local Indebtness Estimate Assumptions**

Assuming a bond payment term of 25 years for each issuance and the June 2010 Washington State Economic and Revenue Forecast Council Bond Buyer Index, total 29-year state debt service for the bonds is estimated to be \$937,031,878, for an average annual debt service payment of \$32,311,444. Data below are supplied by the Office of the State Treasurer. No local government debt is assumed from the referendum. (See page 46, Figure 6.4.)

### **State and Local Cost Estimate Assumptions**

The Washington State Department of Commerce, Washington State Department of General Administration and Washington State University Energy Program will incur costs to develop and administer the competitive grant program. Costs include staff salaries and benefits, grant administration, grant workshops, supplies and materials. The Washington State Department of General Administration will incur additional costs to conduct energy saving audits for grant applicants and to manage approved projects. The Washington State Department of Revenue will incur costs to refund sales tax to persons who have purchased bottled water with a prescription or who have no potable water. Total costs are estimated to average \$2,195,409 annually. Data are supplied by state agencies. (See page 47, Figure 6.5.)



Figure 6.1 Bond Value, Costs and Net Revenue					
Fiscal Year	2011	2012	2013	2014	2015
Bond Value	\$5,000,000	\$70,000,000	\$150,000,000	\$150,000,000	\$130,000,000
Cost of Bond Issuance	(\$17,038)	(\$238,533)	(\$511,142)	(\$511,142)	(\$442,990)
Net Revenue to Washington Works Account	\$4,982,962	\$69,761,467	\$149,488,858	\$149,488,858	\$129,557,010

Figure 6.2 Estimated State Grant Expenditures and Increased Local Revenue					
Fiscal Year	2012	2013	2014	2015	2016
Expenditures from Washington Works Account	(\$17,362,232)	(\$130,615,624)	(\$149,363,819)	(\$144,362,639)	(\$55,000,000)
Revenue (Grants) to Public Schools and Higher Education Institutions	\$17,362,232	\$130,615,624	\$149,363,819	\$144,362,639	\$55,000,000

Figure 6.3 Total State and Local Revenue Impacts					
Fiscal Year	2014	2015	2016	2017	2018
Total State General Fund	\$33,867,000	\$38,609,000	\$40,346,000	\$42,162,000	\$44,059,000
Total State Performance Audit Account	\$55,000	\$63,000	\$66,000	\$69,000	\$72,000
Total Local Revenue	\$11,680,000	\$14,647,000	\$15,306,000	\$15,995,000	\$16,715,000

Figure 6.4 State Indebtedness						
Fiscal Year	2011	2012	2013	2014	2015	TOTAL
Bond Value	\$5,000,000	\$70,000,000	\$150,000,000	\$150,000,000	\$130,000,000	\$505,000,000
Average Coupon (Interest) Rate	4.74%	4.76%	5.30%	5.68%	6.01%	
Debt Service	\$8,586,984	\$120,461,348	\$272,420,147	\$282,697,792	\$252,865,607	\$937,031,878

Figure 6.5 State Costs

<b>Fiscal Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Dept. of Commerce	\$779,917	\$639,114	\$639,114	\$639,114	\$639,114
Dept. of General Administration	\$16,222	\$2,026,151	\$2,026,151	\$1,701,403	\$1,701,403
WSU Energy Program	\$48,421	\$17,880	\$17,880	\$17,880	\$17,880
Dept. of Revenue	\$0	\$0	0	\$0	\$49,400
Total State Costs	\$844,560	\$2,683,145	\$2,683,145	\$2,358,397	\$2,407,797

## Argument For Referendum Bill 52

### Referendum 52: Healthy Schools for Washington

Our kids deserve safe, healthy learning environments. But too many of our school buildings are aging and dilapidated. Many are riddled with mold, lead, asbestos and other toxins. Referendum 52 will change that by creating \$505 million in bonding capacity dedicated to repairing public schools, community colleges and university buildings across the state. Taxpayers will save an estimated \$130 million annually in energy costs.

### Making Our Schools Safe for Learning

Referendum 52 will protect our kids by helping to remove asbestos, mold and other toxic substances from contaminated public school buildings. It will repair heating and air conditioning systems and replace deteriorating windows so our schools provide a healthy environment where kids can focus on learning. Our kids should not be put at risk by going to school – Referendum 52 will make our schools safer.

### Creating Jobs Across the State

New improvements mean new jobs. Last year over 105,000 jobs were lost in Washington State. Repairing our aging school buildings will create 30,000 new construction jobs. Every school district will benefit, which will bring new employment opportunities to every community across Washington State.

### Saving Energy and Money

Referendum 52 will save taxpayers money. It requires that only projects with energy cost savings greater than the cost of the project can receive funding. All spending will be subject to audits, and must be fully publicly disclosed.

Referendum 52 means safer schools, more jobs, and lower costs over time. Vote yes on Referendum 52.

### Rebuttal of Argument Against

R-52 will reduce State debt: Contrary to the opponents' claims, R-52 will lower state debt over time. Repairing existing schools will extend the life of school buildings. Less new building construction means less new debt – saving an estimated \$600 million in new school construction bonds over the next eight years. R-52 will save energy and money, create jobs and make schools healthy places for our kids to learn. Approve R-52!

### Argument Prepared by

**Ralph Munro**, former Republican Secretary of State; **Sharon Ness**, Pierce County Nurse; **Patrick Nicholson**, Head Custodian Kitsap School District, Washington Education Association; **Rick Schrader**, Spokane small business Pro-Heating and Air Conditioning; **Joan Crooks**, Executive Director Washington Environmental Council; **Eric Martinson**, Sheet Metal Workers Local 66.

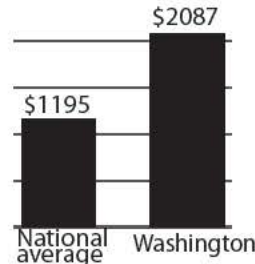
**Contact:** (206) 434-0979; [www.HealthyschoolsforWA.org](http://www.HealthyschoolsforWA.org)

## Argument Against Referendum Bill 52

### Vote No on Referendum 52: More Debt and Taxes Aren't the Answer

#### Already, State Government's Debt Per Person is Nearly Twice the National Average

##### State Debt per Person



### Debt Service has Grown Faster than Education Spending; R-52 Exacerbates the Problem

Debt expenses consume 84% more taxpayer dollars now than 12 years ago, reaching \$1.8 billion in the 2010 budget. Debt service costs more than the Department of Corrections, UW, WSU, or state parks.

Olympia should be reducing debt; higher debt costs mean less for core services.

### R-52 Sidesteps Constitutional Debt Limit that Protects Taxpayers

R-52 authorizes debt outside the Article 8, Section 1 constitutional limit. This is unwise and unnecessary. Lottery proceeds should go to school construction, but they and other funds (nearly \$1 billion total) are being diverted. Trading huge long-term debt and a permanent bottled-water tax for short-term jobs doesn't add up.

*More debt? More taxes? Please vote no on R-52.*

### Rebuttal of Argument For

Schools? Only 5% is guaranteed to K-12. Most funds will go to universities.

Jobs? The state's economists estimate 5,700 short-term construction jobs, not 30,000. The nearly \$1 billion cost of repaying R-52 costs taxpayers \$162,000 per job.

Health? For 40 years, state law has required healthy schools. R-52 criteria make no mention of asbestos, mold, or school health. This is "bait-and-switch."

Washingtonians already bear more government debt per person than Californians. Vote *no*.

### Argument Prepared by

**Joseph Zarelli**, State Senator, Ranking Member, Ways and Means Committee; **Judy Warnick**, State Representative, Ranking Member, Capital Budget Committee; **Rodney Tom**, State Senator, Vice-Chair, Ways and Means Committee.

**Contact:** No information submitted



## Complete Text

### Referendum Bill 52

AN ACT Relating to creating jobs by funding construction of energy cost saving improvements to public facilities and raising revenue therefor; amending RCW 82.08.0293, 82.12.0293, and 39.94.040; adding a new chapter to Title 43 RCW; creating new sections; making an appropriation; providing a contingent effective date; providing for submission of certain sections of this act to a vote of the people; and declaring an emergency.

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

#### PART I SHORT TITLE AND INTENT

**NEW SECTION. Sec. 101.** This act may be known and cited as the 12 jobs act.

**NEW SECTION. Sec. 102.** The legislature intends to create jobs in every corner of Washington state by issuing bonds, which will catalyze energy savings and repair work at public schools and state colleges and universities.

It is the intent of the legislature that these investments will create jobs quickly and directly, at a time when the state's residents need jobs. It is the further intent of the legislature that these investments both accelerate innovation in the energy efficiency sector and create locally developed technologies and companies to provide sustainable jobs. The legislature intends to prioritize the use of innovative technologies and facilitate the development of a sustainable innovation cluster that creates and installs highly efficient building technologies and creates jobs.

The legislature intends that these job-creating projects save taxpayers money, with an estimated one hundred twenty-six million dollars saved each year in public schools through reduced energy and operational costs, and improve the health and safety of those buildings. The energy savings are equivalent to the use of an estimated ninety thousand houses. It is also the intent of the legislature that these job-creating projects lead to reduced pollutants, as the weatherization and energy efficiency projects will reduce pollution emissions by an estimated amount equivalent to removing an estimated one hundred thirty thousand cars from the roads each year.

#### PART II BOND AUTHORIZATION

**NEW SECTION. Sec. 201.** (1) For the purpose of creating jobs by constructing needed capital improvements to public facilities for energy, utility, and operational cost savings, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of five hundred five million dollars, or so much thereof as may be required, for this purpose and all costs incidental thereto. The bonds issued under the authority of this section are known as jobs act bonds.

(2) Bonds authorized in this section must be sold in the manner, at the time or times, in amounts, and at such prices as the state finance committee determines.

(3) The authorization to issue bonds contained in this chapter

does not expire until the full authorization has been issued.

(4) No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

**NEW SECTION. Sec. 202.** (1) The nondebt-limit general fund bond retirement account must be used for the payment of the principal of and interest on the bonds authorized in section 201 of this act.

(2) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in section 201 of this act.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of section 201 of this act, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

**NEW SECTION. Sec. 203.** (1) Bonds issued under this section and sections 201 and 202 of this act must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay the principal and interest as the same shall become due.

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

#### PART III PROGRAM REQUIREMENTS, APPROPRIATIONS, AND REVENUE PROVISIONS

**NEW SECTION. Sec. 301.** (1) The department of commerce, in consultation with the department of general administration and the Washington State University energy program, shall administer the jobs act.

(2) The department of general administration must develop guidelines that are consistent with national and international energy savings performance standards for the implementation of energy savings performance contracting projects by the energy savings performance contractors by December 31, 2010.

(3) The definitions in this section apply throughout this chapter and section 302 of this act unless the context clearly requires otherwise.

(a) "Cost-effectiveness" means that the present value to higher education institutions and school districts of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(b) "Energy cost savings" means savings realized in expenses for energy use and expenses associated with water, wastewater, or solid waste systems.



(c) "Energy equipment" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(d) "Energy savings performance contracting" means the process authorized by chapter 39.35C RCW by which a company contracts with a public agency to conduct energy audits and guarantee energy savings from energy efficiency.

(e) "Innovative measures" means advanced or emerging technologies, systems, or approaches that may not yet be in common practice but improve energy efficiency, accelerate deployment, or reduce energy usage, and become widely commercially available in the future if proven successful in demonstration programs without compromising the guaranteed performance or measurable energy and operational cost savings anticipated. Examples of innovative measures include, but are not limited to, advanced energy and systems operations monitoring, diagnostics, and controls systems for buildings; novel heating, cooling, ventilation, and water heating systems; advanced windows and insulation technologies, highly efficient lighting technologies, designs, and controls; and integration of renewable energy sources into buildings, and energy savings verification technologies and solutions.

(f) "Operational cost savings" means savings realized from parts, service fees, capital renewal costs, and other measurable annual expenses to maintain and repair systems. This definition does not mean labor savings related to existing facility staff.

(g) "Public facilities" means buildings, building components, and major equipment or systems owned by public school districts and public higher education institutions.

**NEW SECTION. Sec. 302.** (1) Within appropriations specifically provided for the purposes of this chapter, the department of commerce, in consultation with the department of general administration, and the Washington State University energy program shall establish a competitive process to solicit and evaluate applications from public school districts, public higher education institutions, and other state agencies. Final grant awards shall be determined by the department of commerce.

(2) Grants must be awarded in competitive rounds, based on demand and capacity, with at least five percent of each grant round awarded to small public school districts with fewer than one thousand full-time equivalent students, based on demand and capacity.

(3) Within each competitive round, projects must be weighted and prioritized based on the following criteria and in the following order:

(a) Leverage ratio: In each round, the higher the leverage ratio of nonstate funding sources to state jobs act grant, the higher the project ranking.

(b) Energy savings: In each round, the higher the energy savings, the higher the project ranking. Applicants must submit documentation that demonstrates energy and

operational cost savings resulting from the installation of the energy equipment and improvements. The energy savings analysis must be performed by a licensed engineer and documentation must include but is not limited to the following:

(i) A description of the energy equipment and improvements;

(ii) A description of the energy and operational cost savings; and

(iii) A description of the extent to which the project employs collaborative and innovative measures and encourages demonstration of new and emerging technologies with high energy savings or energy cost reductions.

(c) Expediency of expenditure: Project readiness to spend funds must be prioritized so that the legislative intent to expend funds quickly is met.

(4) Projects that do not use energy savings performance contracting must: (a) Verify energy and operational cost savings, as defined in section 301 of this act, for ten years or until the energy and operational costs savings pay for the project, whichever is shorter; (b) follow the department of general administration's energy savings performance contracting project guidelines developed pursuant to section 301 of this act; and (c) employ a licensed engineer for the energy audit and construction. The department of commerce may require third-party verification of savings if a project is not implemented by an energy savings performance contractor selected by the department of general administration through the request of qualifications process. Third-party verification must be conducted either by an energy savings performance contractor selected by the department of general administration through a request for qualifications, a licensed engineer specializing in energy conservation, or by a project resource conservation manager or educational service district resource conservation manager.

(5) To intensify competition, the department of commerce may only award funds to the top eighty-five percent of projects applying in a round until the department of commerce determines a final round is appropriate. Projects that do not receive a grant award in one round may reapply in subsequent rounds.

(6) To match federal grants and programs that require state matching funds and produce significantly higher efficiencies in operations and utilities, the level of innovation criteria may be increased for the purposes of weighted scoring to capture those federal dollars for selected projects that require a higher level of innovation and regional collaboration.

(7) Grant amounts awarded to each project must allow for the maximum number of projects funded with the greatest energy and cost benefit.

(8)(a) The department of commerce must use bond proceeds to pay one-half of the preliminary audit, up to five cents per square foot, if the project does not meet the school district's and higher education institution's predetermined cost-effectiveness criteria. School districts and higher education institutions must pay the other one-half of the cost of the preliminary audit if the project does not meet their predetermined cost-effectiveness criteria.

(b) The energy savings performance contractor may not charge for an investment grade audit if the project does not



meet the school district's and higher education institution's predetermined cost-effectiveness criteria. School districts and higher education institutions must pay the full price of an investment grade audit if they do not proceed with a project that meets the school district's and higher education institution's predetermined cost-effectiveness criteria.

(9) The department of commerce may charge projects administrative fees and may pay the department of general administration and the Washington State University energy program administration fees in an amount determined through a memorandum of understanding.

(10) The department of commerce and the department of general administration must submit a joint report to the appropriate committees of the legislature and the office of financial management on the timing and use of the grant funds, program administrative function, compliance with apprenticeship utilization requirements in RCW 39.04.320, compliance with prevailing wage requirements, and administration fees by the end of each fiscal year, until the funds are fully expended and all savings verification requirements are fulfilled.

**NEW SECTION. Sec. 303. FOR THE DEPARTMENT OF COMMERCE--JOBS ACT**

The appropriation in this section is subject to the following conditions and limitations: The appropriation is for fiscal year 2011 and is provided solely for grants to public school districts and public higher education institutions for energy and operational cost savings improvements to public facilities and related projects that result in energy and operational cost savings under the provision and requirements of sections 301 and 302 of this act. Related projects are those projects that must be completed in order for the energy efficiency improvements to be effective.

Appropriation:

Washington Works Account--State .....	\$500,000,000
Prior Biennia (Expenditures) .....	\$0
Future Biennia (Projected Costs) .....	\$0
<b>TOTAL .....</b>	<b>\$500,000,000</b>

**NEW SECTION. Sec. 304.** The legislature intends to increase general state revenues to pay for a portion of the increased debt service costs for voter-approved bonds and for debt-limit bonds authorized by the legislature for projects awarded grants under sections 301 and 302 of this act for energy efficiency projects in public facilities.

**Sec. 305.** RCW 82.08.0293 and 2010 1st sp.s. c ... (2ESSB 6143) s 902 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) ~~((Until July 1, 2013.))~~ The exemption of "food and food ingredients" provided for in subsection (1) of this section

does not apply to prepared food, soft drinks, bottled water, candy, or dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.))~~ For purposes of this subsection, the following definitions apply:

(a) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(b)(i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single 38 item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent



of vegetable or fruit juice by volume.

(d) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

(e) "Bottled water" means water that is placed in a sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 29 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**Sec. 306.** RCW 82.12.0293 and 2010 1st sp.s. c ... (2ESSB 6143) s 903 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) ~~((Until July 1, 2013,))~~ The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, candy, or dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.))~~ "Prepared food," "soft drinks," "dietary supplements," "candy," and "bottled water" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((apply))~~ applies to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income 18 senior housing facility" has the same meaning as in RCW 82.08.0293.

#### **PART IV TECHNICAL PROVISIONS**

**NEW SECTION. Sec. 401.** (1) The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 201 of this act, and section 202 of this act may not be deemed to provide an exclusive method for the payment.

(2) The office of the state treasurer must determine a mechanism to allow individual Washington state residents to purchase jobs act bonds.

**NEW SECTION. Sec. 402.** The bonds authorized by this chapter constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations.

**NEW SECTION. Sec. 403.** The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds provided for in this act, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

**NEW SECTION. Sec. 404.** The Washington works account is created in the state treasury. All receipts from bonds authorized under section 201 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. The proceeds from the sale of the bonds authorized in section 201 of this act must be deposited in the account. Moneys in the account must be used exclusively for:



(1) The purposes of sections 301, 302, and 303 of this act, which includes energy and operational cost savings improvements and related projects that result in energy and operational cost savings for public school districts and public higher education institutions; and

(2) The payment of the expenses incurred in connection with the sale and issuance of the bonds.

**NEW SECTION. Sec. 405.** If the state finance committee deems it necessary to issue any portion of the bonds authorized in this chapter as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds must be transferred to the state taxable building construction account in lieu of any deposits otherwise provided by section 404 of this act. The state treasurer must submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation. For purposes of this section, "nontaxable bond proceeds" includes proceeds from bonds issued as tax exempt bonds and proceeds from taxable bonds eligible for direct federal subsidy under federal internal revenue service rules.

**Sec. 406.** RCW 39.94.040 and 2003 c 6 s 2 are each amended to read as follows:

(1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state

may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency. For the purposes of this requirement, a financing contract must be treated as used for real property if it is being entered into by the state for the acquisition of land; the acquisition of an existing building; the construction of a new building; or a major remodeling, renovation, rehabilitation, or rebuilding of an existing building. Prior approval of the legislature is not required under this chapter for a financing contract entered into by the state under this chapter for energy conservation improvements to existing buildings where such improvements include (a) fixtures and equipment that are not part of a major remodeling, renovation, rehabilitation, or rebuilding of the building, or (b) other improvements to the building that are being performed for the primary purpose of energy conservation. Such energy conservation improvements must be determined eligible for financing under this chapter by the office of financial management in accordance with financing guidelines established by the state treasurer, and are to be treated as personal property for the purposes of this chapter.

## PART V REFERENDUM PROVISIONS

**NEW SECTION. Sec. 501.** (1) The secretary of state shall submit sections 101 through 203 and 401 through 405 of this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 and Article VIII, section 3 of the state Constitution and the laws adopted to facilitate their operation.

(2) If the people ratify this act as specified under subsection (1) of this section, revenues generated shall be spent as detailed in this act.

(3) Pursuant to RCW 29A.72.050(6), the statement of subject and concise description for the ballot title shall read: "The legislature has passed Engrossed House Bill No. 2561 (this act), concerning job creation through energy efficiency projects in school buildings. This bill would promote job creation by authorizing bonds to construct energy efficiency savings improvements to schools, including higher education buildings."

**NEW SECTION. Sec. 502.** Sections 303 through 306 of this act are contingent upon approval by the voters of sections 101 through 203 and 401 through 405 of this act. If sections 101 through 203 and 401 through 405 of this act are not approved by the voters by December 1, 2010, sections 303 through 306 of this act are null and void.

**NEW SECTION. Sec. 503.** Sections 201 through 203, 301, 302, and 401 through 405 of this act constitute a new chapter in Title 43 RCW.

## PART VI MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 601.** This act takes effect if Second Engrossed Substitute Senate Bill No. 6143 is enacted by the legislature during the 2010 1st special session.

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