BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0810.3/12 3rd draft

ATTY/TYPIST: JA:eab

BRIEF DESCRIPTION: Creating a plan of finance to prevent the default of bonds issued by distressed public facilities districts.

AN ACT Relating to a plan of finance to prevent the default of bonds issued by distressed public facilities districts; amending RCW 82.14.390, 82.14.050, and 43.79A.040; adding new sections to chapter 35.57 RCW; adding new sections to chapter 82.14 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** Findings. The legislature finds that preventing a default on debt issued by public facilities districts is in the best interest of the state, its municipalities, and its citizens as a whole. The legislature further finds that it is an important state purpose to provide sufficient tools to assist public facilities districts when the threat of default is imminent. Therefore, the legislature finds it is necessary to act swiftly to provide the tools necessary to prevent a default on debt issued by public facilities districts prior to the next regularly scheduled legislative session.

NEW SECTION. **Sec. 2.** A new section is added to chapter 35.57 RCW to read as follows:

When a public facilities district qualifies as a distressed public

facilities district, the provisions of sections 1 through 11 of this act supersede any agreements or any terms of any agreements between or among the jurisdictions forming the public facilities district to the extent agreements or any terms thereof are inconsistent with sections 1 through 11 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 35.57 RCW to read as follows:

The definitions in this section apply throughout this section and sections 1, 2, and 4 through 11 of this act unless the context clearly requires otherwise.

(1) "Anchor jurisdiction" means the city that has entered into an agreement to form a public facilities district that constitutes a distressed public facilities district under this chapter and in which the largest asset of the distressed public facilities district is located.

(2) "Distressed public facilities district" means a public facilities district that is at imminent risk of default due to an inability to pay indebtedness on or before December 31, 2011, as determined by the state treasurer.

(3) "Indebtedness" means bonds, notes, or other evidences of indebtedness together with interest.

(4) "Identified obligation" means an indebtedness of a distressed public facilities district which, without intervention, is at imminent risk of default according to its terms. Notwithstanding any form of refinancing of the identified obligation, including but not limited to a loan administered by the state and any subsequent refinancing of that loan in whole or in part, such an obligation will remain the "identified obligation" until the original amount of the obligation including without limitation, the refinancing, plus accrued interest, is repaid in full.

(5) "Loan" or "loan administered by the state" means any expenditure made out of the distressed public facilities district obligation account pursuant to section 4 of this act.

(6) "Related jurisdiction" means a city or county that has entered into an agreement to form a public facilities district that is determined to be a distressed public facilities district under this chapter.

NEW SECTION. **Sec. 4.** A new section is added to chapter 35.57 RCW to read as follows:

(1) The distressed public facilities district obligation account is created in the custody of the state treasurer. Expenditures from the account may be used only for loans to distressed public facilities districts made in accordance with the terms set forth in this section. Only the state treasurer may authorize expenditures from this account.

(2) The state treasurer is authorized to make a loan from the distressed public facilities district obligation account to pay the identified obligation of any distressed public facilities district with funds transferred pursuant to section 5 of this act. This loan may be made with or without the consent of the distressed public facilities district.

(3) Any funds applied to the repayment of the loan must be deposited into the distressed public facilities district obligation account. After any expenditures from the account are made as directed in subsection (2) of this section, the state treasurer periodically must transfer the balance in the distressed public facilities district obligation account to the local sales and use tax account, which must include interest accruing on the loan as well as any interest earnings attributable to the distressed public facilities district obligation account.

(4) When the state makes a loan to pay an identified obligation, including accrued interest, the state treasurer must collect from the distressed public facilities district, the anchor jurisdiction, and related jurisdictions an amount equal to the total amount of the identified obligation including accrued interest. The conditions of the loan and its repayment are as follows:

(a) The term of the loan is eleven years subject to prepayment in whole or in part;

(b) Interest accrues monthly at a variable rate equal to the twenty bond general obligation bond buyer index plus one percentage point and begins accruing on the first day of the month following the month in which the loan was made; and

(c) The taxes identified in subsection (5) of this section, and in the order specified therein, must be transferred from the local sales and use tax account to the distressed public facilities district obligation account for repayment of the loan, in amounts sufficient to

make equal monthly payments of principal plus interest over the remaining term. If a lump sum payment is received by the state in repayment of any portion of the loan, the principal amount on the outstanding loan must be reduced by the lump sum payment and monthly payments must be recalculated accordingly. In no event may the requirement to make monthly payments be eliminated in any month.

(5) The state treasurer must transfer taxes that would otherwise be distributed to the distressed public facilities district, anchor jurisdiction, and related jurisdictions into the distressed public facilities district obligation account in the following priority order:

(a) If the distressed public facilities district imposes the maximum tax allowed under section 6 of this act:

(i) First, all taxes that would otherwise be distributed to the distressed public facilities district pursuant to RCW 82.14.390 beginning January 1, 2013;

(ii) Second, all taxes that would otherwise be distributed to the distressed public facilities district pursuant to section 6 of this act beginning on the first day such taxes would otherwise be disbursed to the distressed public facilities district;

(iii) Third, all taxes that would otherwise be distributed to the anchor jurisdiction under section 7 of this act beginning on the first day such taxes would otherwise be disbursed to the anchor jurisdiction;

(iv) Fourth, all taxes that would otherwise be distributed to any related jurisdiction under section 7 of this act beginning on the first day such taxes would otherwise be disbursed to the related jurisdiction; and

(v) Fifth, taxes that would otherwise be distributed to the anchor jurisdiction under RCW 82.14.030 beginning January 1st of the second year following the year in which the loan was made to the extent monthly payment obligations as determined by the state treasurer, cannot be met with revenues collected from (a)(i) through (iv) of this subsection (5).

(b) If the distressed public facilities district does not impose the maximum amount of the tax provided for in section 6 of this act:

(i) First, all taxes that would otherwise be distributed to the distressed public facilities district pursuant to RCW 82.14.390 beginning January 1, 2013;

(ii) Second, all taxes that would otherwise be distributed to the distressed public facilities district pursuant to section 6 of this act beginning on the first day such taxes would otherwise be disbursed to the distressed public facilities district;

(iii) Third, taxes that would otherwise be distributed to a related jurisdiction or anchor jurisdiction pursuant to section 7 of this act beginning on the first day such taxes would otherwise be disbursed to the jurisdiction. The amount transferred from a jurisdiction in a given month must be credited against the amount owed in that month by such jurisdiction under (b)(iv) of this subsection (5). Any excess collected must also be applied to repayment of the loan;

(iv) Fourth, taxes that would otherwise be distributed to the anchor jurisdiction and related jurisdictions pursuant to RCW 82.14.030 in an aggregate amount which, when combined with any taxes imposed under section 6 of this act and subsequently transferred according to this section, will equal fifty percent of the monthly payment due on the loan. Such aggregate amount must be collected from the anchor jurisdiction and related jurisdictions on a pro rata basis based on the percentage of local sales tax collected by each jurisdiction in the preceding calendar year under RCW 82.14.030, or based on an allocation among the jurisdictions specified in an agreement adopted by all of the related jurisdictions. If a lump sum payment is received on a portion of the loan, the principal amount on the outstanding loan must be reduced by the lump sum payment and monthly payments must be recalculated and reflected in the next months' payment obligation; and

(v) Fifth, taxes that would otherwise be distributed to the anchor jurisdiction pursuant to RCW 82.14.030 and any other legally available revenue of the anchor jurisdiction to the extent monthly payment obligations cannot be met with revenues collected from (b)(i) through (iv) of this subsection (5).

(6) Diversion of taxes under subsection (5) of this section terminates once the loan and any accumulated interest have been paid in full. Any excess remaining in the distressed public facilities district obligation account must be transferred to the distressed public facilities district.

(7) Any taxes collected pursuant to RCW 82.14.390 or section 6 or 7 of this act may be pledged by the distressed public facilities district, anchor jurisdiction, or related jurisdiction respectively, to

bonds issued to retire the loan or any portion of the loan administered by the state. So long as any portion of the loan to the state is outstanding, taxes may be pledged as follows:

(a) If a distressed public facilities district issues indebtedness to repay a portion of the loan, taxes authorized to be levied by such district under RCW 82.14.390 and section 6 of this act may be pledged by such district to the repayment of the indebtedness provided that amounts collected but not required for the next scheduled principal and interest payment must remain available to the state for repayment of the loan;

(b) If an anchor jurisdiction issues indebtedness to repay a portion of the loan, taxes authorized under section 7 of this act and imposed by the anchor jurisdiction may be pledged by the anchor jurisdiction to the repayment of the indebtedness provided that amounts collected but not required for the next scheduled principal and interest payment must remain available to the state for repayment of the loan; and

(c) If a related jurisdiction issues bonds to repay a portion of the loan, taxes authorized under section 7 of this act and imposed by that related jurisdiction may be pledged to the repayment of such indebtedness. However, amounts collected but not required for the next scheduled principal and interest payment must remain available to the state for repayment of the loan.

NEW SECTION. **Sec. 5.** On the effective date of this section, the state treasurer must transfer into the distressed public facilities district obligation account from the local sales and use tax account the sum of forty-two million dollars.

NEW SECTION. **Sec. 6.** A new section is added to chapter 82.14 RCW to read as follows:

(1) Notwithstanding anything to the contrary in law or by agreement among the cities or counties forming a public facilities district under chapter 35.57 RCW, the governing body of a public facilities district that qualifies as a distressed public facilities district, as defined in section 3 of this act, may submit an authorizing proposition to the voters of the district and, if the proposition is approved by a majority of the persons voting, impose such a sales and use tax. The

tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction. The rate of tax may not exceed two-tenths of one percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The governing body of a distressed public facilities district must provide in its resolution authorizing such a tax:

(a) The maximum amount of the identified obligation, as defined in section 3 of this act, to be paid with the proceeds of the tax and the maximum term or terms of its repayment;

(b) The amount of revenue currently collected by the distressed public facilities district; and

(c) The maximum amount of tax revenue needed to pay the identified obligation.

(3) Once imposed, this tax remains in effect so long as any portion of the identified obligation is outstanding.

(4) A distressed public facilities district may not impose the tax authorized in this section after December 31st of the year in which the identified obligation has been paid or legally defeased.

NEW SECTION. **Sec. 7.** A new section is added to chapter 82.14 RCW to read as follows:

(1) The legislative authority of either an anchor jurisdiction or a related jurisdiction of a distressed public facilities district as defined in section 3 of this act may, by majority vote, impose a sales and use tax in accordance with the requirements of this section. Alternatively, the legislative authority may submit an authorizing proposition to the voters and, if the proposition is approved by a majority of the persons voting, impose such a sales and use tax. The tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction. The rate of tax may not exceed two-tenths of one percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) Any tax imposed under this section must be directed in the following priority order:

(a) First, to make debt service payments or other repayments on debt issued to which the taxes are pledged by the anchor jurisdiction or related jurisdiction as defined in section 3 of this act;

(b) Second, to repay the loan administered by the state to the distressed public facilities district as defined in section 3 of this act, according to its terms; and

(c) Third, to make payments to the distressed public facilities district to increase revenues available to it for capital improvements, operations, or to build reserves.

(3)(a) In no event may a tax imposed under this section cause the tax for any anchor or related jurisdiction, when combined with the tax authorized under section 6 of this act, to exceed two-tenths of one percent.

(b) If a tax is imposed under this section but not otherwise pledged to repay indebtedness, and a distressed public facilities district subsequently imposes a tax under section 6 of this act, an anchor or related jurisdiction within six months of the imposition of the tax under section 6 of this act must adjust or eliminate its tax accordingly.

(4) Neither an anchor jurisdiction nor a related jurisdiction may impose the tax authorized in this section after December 31st of the year in which the identified obligation has been paid or legally defeased.

Sec. 8. RCW 82.14.390 and 2011 1st sp.s. c 50 s 973 are each amended to read as follows:

(1) Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commences construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in

which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, or before January 1, 2011, in the case of a new regional center in a county designated by the president as a disaster area in December 2007, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax may not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this section may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department must determine sales and use tax collection net losses under this section as provided in RCW 82.14.500 (2) and (3). The department must provide written notice of its determinations to public facilities districts. Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the public facilities district. During the 2011-2013 fiscal biennium, distributions by the state to a public facilities district based on the additional rate authorized in subsection (2) of this section must be reduced by 3.4 percent.

(4)(a) No tax may be collected under this section before August 1, 2000. Subject to (b) of this subsection, the tax imposed in this section expires when the later of the following has occurred:

(i) The bonds issued for the construction of the regional center and related parking facilities are retired((~~, but~~)); or

(ii) The identified obligation of a distressed public facilities district has been paid. For the purposes of this subsection, "identified obligation" and "distressed public facilities district" have the same meanings as provided in section 3 of this act.

(b) Notwithstanding (a) of this subsection (4), the tax imposed in this section must expire not more than twenty-five years after the tax is first collected.

(5) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and, sections 2 and 4 of this act and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section; however, amounts generated from nonvoter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW do not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section may not be greater than 0.037 percent. If both a public facilities district

created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW must be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494.

Sec. 9. RCW 82.14.050 and 2009 c 469 s 107 are each amended to read as follows:

(1) The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be withdrawn only for:

(a) Distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax; ((~~and~~))

(b) Making refunds of taxes imposed under the authority of this chapter and RCW 81.104.170 and exempted under RCW 82.08.962 and 82.12.962<u>; and</u>

<u>(c) Transfers to the distressed public facilities district obligation account as provided in sections 4 and 5 of this act</u>.

(2) All administrative provisions in chapters 82.03, 82.08, 82.12,

and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter.

(3) Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement.

(4) Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly.

NEW SECTION. **Sec. 10.** (1) The Washington state treasurer and Washington state auditor must examine the financial condition of the state's two thousand four hundred local governmental entities to identify those in which there may be indications of financial distress.

(a) The state treasurer and state auditor must consult with local government associations, the municipal research services center, the local government advisory committee established to advise the state auditor's office in prescribing local government budgeting, accounting, and reporting systems, and other interested parties at the discretion of the state treasurer and state auditor to assist in the examination of the financial conditions of the local governments.

(b) The state treasurer and state auditor must report on their initial findings under this section to the governor and the appropriate committees of the legislature by January 10, 2012.

(2) By January 10, 2012, the state treasurer must recommend legislation to establish a forward-looking capacity to protect the state and its local governmental entities from negative effects in the unlikely event of another impending default on debts owed by a local governmental entity.

Sec. 11. RCW 43.79A.040 and 2011 1st sp.s. c 37 s 603 are each amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080

in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

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

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

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, <u>the distressed public facilities district obligation account,</u> the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and

product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, and the reading achievement account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

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

NEW SECTION. **Sec. 12.** If any provision of this act or its

application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 13.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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