
SENATE BILL 5238

State of Washington

62nd Legislature

2011 Regular Session

By Senators Prentice and Conway

Read first time 01/19/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to establishing the Washington investment trust;
2 amending RCW 42.56.270; reenacting and amending RCW 42.56.400; adding
3 a new section to chapter 39.58 RCW; adding a new chapter to Title 43
4 RCW; creating new sections; providing an effective date; and providing
5 an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that access to capital
8 is vitally important for the health, security, and well-being of all
9 individuals and businesses in the state. The lack of accessible
10 capital, as currently experienced due to the economic downturn, is
11 exacerbating the economic hardships faced by working families and
12 businesses.

13 The legislature further finds that it can best direct economic
14 development policy initiatives, build a strong and resilient economy,
15 and use the people's collective resources for their own benefit in an
16 efficient manner with an investment trust at its disposal.

17 The mission of the Washington investment trust is to: Promote
18 agriculture, education, community development, economic development,
19 housing, and industry in Washington state by building a resource to

1 help stabilize and grow Washington's economy; use the resources of the
2 people of Washington state within the state; support the common good
3 and public benefit of Washington state; and leverage Washington's
4 financial capital and resources. It may work in partnership with
5 financial institutions, community-based organizations, economic
6 development groups, guaranty agencies, and other stakeholder groups.
7 Transparency, accountability, and accuracy of financial reporting and
8 compliance with all applicable laws and rules are crucial to sound
9 fiscal management of the institution to meet its long-term objectives.

10 It is the intent of the legislature that all state funds be
11 deposited in the Washington investment trust and be guaranteed by the
12 state and used to promote the common good and public benefit of all the
13 people and their businesses within Washington state.

14 NEW SECTION. **Sec. 2.** (1)(a) The investment trust blue ribbon
15 founding task force is established, with members as provided in this
16 subsection.

17 (i) The president of the senate shall appoint one member from each
18 of the two largest caucuses of the senate.

19 (ii) The speaker of the house of representatives shall appoint one
20 member from each of the two largest caucuses of the house of
21 representatives.

22 (iii) The president of the senate and the speaker of the house of
23 representatives jointly shall appoint members representing a small
24 sized state-chartered bank, a medium sized state-chartered bank, a
25 federally chartered bank, local governments, and four citizens with a
26 background in financial issues.

27 (iv) The director, the treasurer, and the governor, or their
28 designees, shall be members of the task force.

29 (b) The task force shall choose its chair from among its
30 membership. The legislative members of the task force shall convene
31 the initial meeting of the task force within thirty days after the
32 effective date of this section.

33 (2) The task force shall create an implementation plan for the
34 trust and review and make recommendations on the following issues:

35 (a) A strategic five-year plan aligned with the mission of the
36 trust;

37 (b) Capital requirements of the trust;

1 (c) Sound underwriting practices for the trust;
2 (d) Standards to ensure that loans result in the outcomes described
3 in the approved loan applications;
4 (e) Content and other requirements for quarterly reports submitted
5 by the trust to the commission;
6 (f) Transition of state banking functions to the trust;
7 (g) A timeline for depositing state moneys into the trust;
8 (h) Cash management and banking needs of the state;
9 (i) Transparency requirements for trust operations;
10 (j) Ethics and conflict of interest requirements for the
11 commission, the board, and officers and employees of the trust;
12 (k) Additional necessary legislation; and
13 (l) Initial capitalization options for the trust.
14 (3) Staff support for the task force must be provided by the senate
15 committee services and the house of representatives office of program
16 research.
17 (4) Legislative members of the task force must be reimbursed for
18 travel expenses in accordance with RCW 44.04.120. Nonlegislative
19 members, except those representing an employer or organization, are
20 entitled to be reimbursed for travel expenses in accordance with RCW
21 43.03.050 and 43.03.060.
22 (5) The expenses of the task force must be paid jointly by the
23 senate and the house of representatives. Task force expenditures are
24 subject to approval by the senate facilities and operations committee
25 and the house of representatives executive rules committee, or their
26 successor committees.
27 (6) The task force shall report its findings, recommendations, and
28 implementation plan to the appropriate committees of the legislature by
29 December 1, 2011.
30 (7) The task force may contract with additional persons who have
31 specific technical expertise if the expertise is necessary to carry out
32 the mandates of the review and development of the implementation plan.
33 The task force may accept gifts, grants, loans, or other aid from
34 public or private entities to contract with additional persons.
35 (8) The task force, where appropriate, may consult with individuals
36 from the public and private sector or ask the individuals to establish
37 an advisory committee. Members of such an advisory committee are not
38 entitled to expense reimbursement.

1 (9) The department and the treasurer shall cooperate with the task
2 force and provide information as the chair may reasonably request.

3 (10) This section expires June 30, 2012.

4 NEW SECTION. **Sec. 3.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Board" means the advisory board of the Washington investment
7 trust.

8 (2) "Commission" means the investment trust commission.

9 (3) "Department" means the department of financial institutions.

10 (4) "Director" means the director of the department of financial
11 institutions.

12 (5) "State-chartered bank" means any corporation organized under
13 the laws of this state that is engaged in banking, other than a trust
14 company, savings association, or a mutual savings bank. It does not
15 include the Washington investment trust.

16 (6) "State moneys" has the same meaning as in RCW 43.85.200.

17 (7) "Treasurer" means the treasurer of the state of Washington.

18 (8) "Trust" means the Washington investment trust.

19 NEW SECTION. **Sec. 4.** The Washington investment trust is created.
20 The purposes of the trust are to:

21 (1) Support the economic development of Washington by increasing
22 access to capital for businesses and farms within Washington;

23 (2) Provide financing for housing development, public works
24 infrastructure, educational infrastructure, student loans, and
25 community quality of life projects;

26 (3) Provide stability to the local financial sector;

27 (4) Reduce the costs paid by the state of Washington for banking
28 services;

29 (5) Lend capital to banks, credit unions, and nonprofit community
30 development financial institutions to assist in meeting their goals of
31 increasing access to capital and providing banking services; and

32 (6) Return earnings, beyond those necessary for continued sound
33 operation of the trust as determined by the commission, to the state
34 general fund.

1 NEW SECTION. **Sec. 5.** (1) The governor, the lieutenant governor,
2 and the treasurer comprise the commission.

3 (2) The commission may adopt rules regarding the:

4 (a) Objectives of the trust;

5 (b) Criteria for evaluating and approving loans;

6 (c) Individual and aggregate lending limits for one borrower; and

7 (d) Eligibility for borrowing.

8 NEW SECTION. **Sec. 6.** (1) The commission shall commence trust
9 operations, according to the implementation plan developed by the task
10 force under section 4 of this act, by January 1, 2013. The trust must
11 be fully operational by July 1, 2013.

12 (2) The treasurer shall deposit all state moneys in the trust by
13 June 30, 2015. All income earned by the trust on state moneys that are
14 deposited in or invested with the trust must be credited to and become
15 a part of the revenues and income of the trust.

16 (3) The trust shall return earnings, beyond those necessary for
17 continued sound operation of the trust as determined by the commission,
18 to the state general fund on an annual basis.

19 NEW SECTION. **Sec. 7.** The commission shall appoint a president and
20 other officers who have relevant experience in the banking sector for
21 the positions for which they are appointed.

22 NEW SECTION. **Sec. 8.** (1) The trust may make loans that are in the
23 public interest and according to sound banking practices, subject to
24 the limitations in this chapter and any rules adopted by the
25 commission. The trust may charge the same terms for a loan or
26 extension of credit as a state-chartered bank under RCW 30.04.025 and
27 exercise any other power or authority permissible to a state-chartered
28 bank under RCW 30.08.140. The trust may invest state moneys in any
29 manner that ensures appropriate cash management. The trust may not
30 make a loan to any board member, the president, or any officer of the
31 trust and must follow applicable ethical requirements in rules adopted
32 by the commission.

33 (2) The trust may purchase, guarantee, or hold loans made by other
34 financial institutions that are in the public interest and according to
35 sound banking practices.

1 (3) For financial institutions that make the trust a reserve
2 depository, the trust may perform the functions and render the services
3 of a clearinghouse, including all facilities for providing domestic and
4 foreign exchange, and may rediscount paper, on such terms as the
5 commission shall determine.

6 (4) The trust may receive deposits from any source and deposit its
7 funds in any trust or other financial institution.

8 (5) The trust may establish lending programs to support public
9 purposes, including those that:

10 (a) Improve access to credit for Washington businesses and farms;

11 (b) Promote sustainable agriculture, renewable energy,
12 conservation, energy efficiency, sustainable mining, industry and
13 manufacturing, tourism, public transportation, and community
14 involvement;

15 (c) Provide resources for infrastructure development;

16 (d) Finance affordable housing and support personal home mortgages
17 and default protection;

18 (e) Expand student loans, educational infrastructure, and
19 individual development accounts; and

20 (f) Finance job creation programs, including green economy jobs.

21 NEW SECTION. **Sec. 9.** (1)(a) The advisory board is established,
22 with fifteen members as provided in this subsection.

23 (i) The president of the senate shall appoint one member from each
24 of the two largest caucuses of the senate.

25 (ii) The speaker of the house of representatives shall appoint one
26 member from each of the two largest caucuses of the house of
27 representatives.

28 (iii) The governor shall appoint, subject to senate confirmation,
29 eleven nonlegislative members. These members must include
30 representatives of the state's financial, agricultural, housing,
31 economic development, infrastructure, labor, and education sectors.

32 (b) The board shall choose its chair from among its membership.

33 (2)(a) The term of the legislative members is three years.

34 (b) The term of the nonlegislative members is three years. Five of
35 the initial board members must be appointed to serve an initial term of
36 three years, three must be appointed to serve an initial term of two
37 years, and the three remaining members must be appointed to serve an

1 initial term of one year. All subsequent terms are three years. To
2 ensure that the board can continue to act, a member whose term expires
3 shall continue to serve until his or her replacement is appointed. In
4 the case of any vacancy on the board for any reason, the governor shall
5 appoint a new member to serve out the term of the person whose position
6 has become vacant. A board member may be removed for cause by the
7 governor.

8 (3) Legislative members of the task force must be reimbursed for
9 travel expenses in accordance with RCW 44.04.120. Nonlegislative
10 members, except those representing an employer or organization, are
11 entitled to be reimbursed for travel expenses in accordance with RCW
12 43.03.050 and 43.03.060.

13 (4) The board must meet regularly to review the trust's finances
14 and its members shall participate in committees created by the
15 commission.

16 NEW SECTION. **Sec. 10.** The trust must maintain capital adequacy
17 and other standard indicators of safety and soundness monitored by the
18 department. The director may examine the trust in the same manner as
19 a state-chartered financial institution under RCW 30.04.060. The trust
20 must pay the director for the reasonable costs of examinations.

21 NEW SECTION. **Sec. 11.** (1) The trust shall submit quarterly
22 reports, in the manner established by the task force under section 4 of
23 this act, to the commission.

24 (2) The commission shall make a report to the legislature on the
25 affairs of the trust by December 1st of each year. The report must
26 include any recommendations for legislative action.

27 NEW SECTION. **Sec. 12.** All deposits in the trust are guaranteed by
28 the state. The trust is exempt from payment of all fees and taxes
29 levied by the state or any of its subdivisions.

30 NEW SECTION. **Sec. 13.** The trust may accept deposits of public
31 funds, but is exempt from the requirements of chapter 39.58 RCW.

32 NEW SECTION. **Sec. 14.** The total compensation of any trust

1 employee may not exceed ten times the average salary of all other
2 employees or one thousand percent of the federal poverty level.

3 NEW SECTION. **Sec. 15.** (1) Under RCW 42.56.270 and 42.56.400,
4 certain trust business records, records of the commission, and records
5 of the department relating to the trust are exempt from public
6 disclosure.

7 (2) Financial and commercial information and records submitted to
8 either the department or the commission for the purpose of
9 administering this chapter may be shared between the department and the
10 treasurer. These records may also be used in any suit or
11 administrative hearing involving any provision of this chapter.

12 (3) This section does not prohibit:

13 (a) The issuance of general statements based on the reports of
14 persons subject to this chapter as long as the statements do not
15 identify the information furnished by any person; or

16 (b) The publication by the director or the commission of the name
17 of any person violating this chapter and a statement of the manner of
18 the violation of that person.

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 39.58 RCW
20 to read as follows:

21 The Washington investment trust established in section 4 of this
22 act may accept deposits of public funds, but is not a public depository
23 and is not subject to the requirements of this chapter.

24 **Sec. 17.** RCW 42.56.270 and 2009 c 394 s 3 are each amended to read
25 as follows:

26 The following financial, commercial, and proprietary information is
27 exempt from disclosure under this chapter:

28 (1) Valuable formulae, designs, drawings, computer source code or
29 object code, and research data obtained by any agency within five years
30 of the request for disclosure when disclosure would produce private
31 gain and public loss;

32 (2) Financial information supplied by or on behalf of a person,
33 firm, or corporation for the purpose of qualifying to submit a bid or
34 proposal for (a) a ferry system construction or repair contract as

1 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
2 or improvement as required by RCW 47.28.070;

3 (3) Financial and commercial information and records supplied by
4 private persons pertaining to export services provided under chapters
5 43.163 and 53.31 RCW, and by persons pertaining to export projects
6 under RCW 43.23.035;

7 (4) Financial and commercial information and records supplied by
8 businesses or individuals during application for loans or program
9 services provided by chapters 43.325, 43.163, 43.160, 43.330, 43.---
10 (the new chapter created in section 19 of this act), and 43.168 RCW, or
11 during application for economic development loans or program services
12 provided by any local agency;

13 (5) Financial information, business plans, examination reports, and
14 any information produced or obtained in evaluating or examining a
15 business and industrial development corporation organized or seeking
16 certification under chapter 31.24 RCW;

17 (6) Financial and commercial information supplied to the state
18 investment board by any person when the information relates to the
19 investment of public trust or retirement funds and when disclosure
20 would result in loss to such funds or in private loss to the providers
21 of this information;

22 (7) Financial and valuable trade information under RCW 51.36.120;

23 (8) Financial, commercial, operations, and technical and research
24 information and data submitted to or obtained by the clean Washington
25 center in applications for, or delivery of, program services under
26 chapter 70.95H RCW;

27 (9) Financial and commercial information requested by the public
28 stadium authority from any person or organization that leases or uses
29 the stadium and exhibition center as defined in RCW 36.102.010;

30 (10)(a) Financial information, including but not limited to account
31 numbers and values, and other identification numbers supplied by or on
32 behalf of a person, firm, corporation, limited liability company,
33 partnership, or other entity related to an application for a horse
34 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
35 license, gambling license, or lottery retail license;

36 (b) Internal control documents, independent auditors' reports and
37 financial statements, and supporting documents: (i) Of house-banked

1 social card game licensees required by the gambling commission pursuant
2 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
3 with an approved tribal/state compact for class III gaming;

4 (11) Proprietary data, trade secrets, or other information that
5 relates to: (a) A vendor's unique methods of conducting business; (b)
6 data unique to the product or services of the vendor; or (c)
7 determining prices or rates to be charged for services, submitted by
8 any vendor to the department of social and health services for purposes
9 of the development, acquisition, or implementation of state purchased
10 health care as defined in RCW 41.05.011;

11 (12)(a) When supplied to and in the records of the department of
12 (~~community, trade, and economic development~~) commerce:

13 (i) Financial and proprietary information collected from any person
14 and provided to the department of (~~community, trade, and economic~~
15 ~~development~~) commerce pursuant to RCW 43.330.050(8); and

16 (ii) Financial or proprietary information collected from any person
17 and provided to the department of (~~community, trade, and economic~~
18 ~~development~~) commerce or the office of the governor in connection with
19 the siting, recruitment, expansion, retention, or relocation of that
20 person's business and until a siting decision is made, identifying
21 information of any person supplying information under this subsection
22 and the locations being considered for siting, relocation, or expansion
23 of a business;

24 (b) When developed by the department of (~~community, trade, and~~
25 ~~economic development~~) commerce based on information as described in
26 (a)(i) of this subsection, any work product is not exempt from
27 disclosure;

28 (c) For the purposes of this subsection, "siting decision" means
29 the decision to acquire or not to acquire a site;

30 (d) If there is no written contact for a period of sixty days to
31 the department of (~~community, trade, and economic development~~)
32 commerce from a person connected with siting, recruitment, expansion,
33 retention, or relocation of that person's business, information
34 described in (a)(ii) of this subsection will be available to the public
35 under this chapter;

36 (13) Financial and proprietary information submitted to or obtained
37 by the department of ecology or the authority created under chapter
38 70.95N RCW to implement chapter 70.95N RCW;

1 (14) Financial, commercial, operations, and technical and research
2 information and data submitted to or obtained by the life sciences
3 discovery fund authority in applications for, or delivery of, grants
4 under chapter 43.350 RCW, to the extent that such information, if
5 revealed, would reasonably be expected to result in private loss to the
6 providers of this information;

7 (15) Financial and commercial information provided as evidence to
8 the department of licensing as required by RCW 19.112.110 or
9 19.112.120, except information disclosed in aggregate form that does
10 not permit the identification of information related to individual fuel
11 licensees;

12 (16) Any production records, mineral assessments, and trade secrets
13 submitted by a permit holder, mine operator, or landowner to the
14 department of natural resources under RCW 78.44.085;

15 (17)(a) Farm plans developed by conservation districts, unless
16 permission to release the farm plan is granted by the landowner or
17 operator who requested the plan, or the farm plan is used for the
18 application or issuance of a permit;

19 (b) Farm plans developed under chapter 90.48 RCW and not under the
20 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
21 RCW 42.56.610 and 90.64.190;

22 (18) Financial, commercial, operations, and technical and research
23 information and data submitted to or obtained by a health sciences and
24 services authority in applications for, or delivery of, grants under
25 RCW 35.104.010 through 35.104.060, to the extent that such information,
26 if revealed, would reasonably be expected to result in private loss to
27 providers of this information;

28 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
29 that can be identified to a particular business; and

30 (20) Financial and commercial information submitted to or obtained
31 by the University of Washington, other than information the university
32 is required to disclose under RCW 28B.20.150, when the information
33 relates to investments in private funds, to the extent that such
34 information, if revealed, would reasonably be expected to result in
35 loss to the University of Washington consolidated endowment fund or to
36 result in private loss to the providers of this information.

1 **Sec. 18.** RCW 42.56.400 and 2010 c 172 s 2 and 2010 c 97 s 3 are
2 each reenacted and amended to read as follows:

3 The following information relating to insurance and financial
4 institutions is exempt from disclosure under this chapter:

5 (1) Records maintained by the board of industrial insurance appeals
6 that are related to appeals of crime victims' compensation claims filed
7 with the board under RCW 7.68.110;

8 (2) Information obtained and exempted or withheld from public
9 inspection by the health care authority under RCW 41.05.026, whether
10 retained by the authority, transferred to another state purchased
11 health care program by the authority, or transferred by the authority
12 to a technical review committee created to facilitate the development,
13 acquisition, or implementation of state purchased health care under
14 chapter 41.05 RCW;

15 (3) The names and individual identification data of either all
16 owners or all insureds, or both, received by the insurance commissioner
17 under chapter 48.102 RCW;

18 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

19 (5) Information provided under RCW 48.05.510 through 48.05.535,
20 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
21 through 48.46.625;

22 (6) Examination reports and information obtained by the department
23 of financial institutions from banks under RCW 30.04.075, from savings
24 banks under RCW 32.04.220, from savings and loan associations under RCW
25 33.04.110, from credit unions under RCW 31.12.565, from the Washington
26 investment trust under chapter 43.--- RCW (the new chapter created in
27 section 19 of this act), from check cashers and sellers under RCW
28 31.45.030(3), and from securities brokers and investment advisers under
29 RCW 21.20.100, all of which is confidential and privileged information;

30 (7) Information provided to the insurance commissioner under RCW
31 48.110.040(3);

32 (8) Documents, materials, or information obtained by the insurance
33 commissioner under RCW 48.02.065, all of which are confidential and
34 privileged;

35 (9) Confidential proprietary and trade secret information provided
36 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
37 48.31C.070;

1 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
2 7.70.140 that, alone or in combination with any other data, may reveal
3 the identity of a claimant, health care provider, health care facility,
4 insuring entity, or self-insurer involved in a particular claim or a
5 collection of claims. For the purposes of this subsection:

6 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

7 (b) "Health care facility" has the same meaning as in RCW
8 48.140.010(6).

9 (c) "Health care provider" has the same meaning as in RCW
10 48.140.010(7).

11 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

12 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

13 (11) Documents, materials, or information obtained by the insurance
14 commissioner under RCW 48.135.060;

15 (12) Documents, materials, or information obtained by the insurance
16 commissioner under RCW 48.37.060;

17 (13) Confidential and privileged documents obtained or produced by
18 the insurance commissioner and identified in RCW 48.37.080;

19 (14) Documents, materials, or information obtained by the insurance
20 commissioner under RCW 48.37.140;

21 (15) Documents, materials, or information obtained by the insurance
22 commissioner under RCW 48.17.595;

23 (16) Documents, materials, or information obtained by the insurance
24 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

25 (17) Documents, materials, or information obtained by the insurance
26 commissioner in the commissioner's capacity as receiver under RCW
27 48.31.025 and 48.99.017, which are records under the jurisdiction and
28 control of the receivership court. The commissioner is not required to
29 search for, log, produce, or otherwise comply with the public records
30 act for any records that the commissioner obtains under chapters 48.31
31 and 48.99 RCW in the commissioner's capacity as a receiver, except as
32 directed by the receivership court; and

33 (18) Data, information, and documents provided by a carrier
34 pursuant to section 1, chapter 172, Laws of 2010.

35 NEW SECTION. **Sec. 19.** Sections 3 through 15 of this act
36 constitute a new chapter in Title 43 RCW.

1 NEW SECTION. **Sec. 20.** Sections 4 through 18 of this act take
2 effect December 1, 2011.

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