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## Capital Budget Committee

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### ESSB 5033

**Brief Description:** Concerning financing essential public infrastructure.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Honeyford, Frockt, Warnick, Conway and Palumbo).

#### Brief Summary of Engrossed Substitute Bill

- Establishes a Public Works Financing Assistance program administered by the Public Works Board, contingent on a constitutional amendment.
- Authorizes the Public Works Board to make loans for certain local government capital projects from the proceeds of state-issued bonds, and makes the debt service payable by the local government borrowers, dependent on a constitutional amendment being adopted.
- Authorizes the Washington State Housing Finance Commission to provide financing for local infrastructure projects through the issuance of bonds or loans, if the constitution amendment is not adopted.
- Permanently directs portions of the Public Utilities Tax, Solid Waste Tax and Real Estate Excise Tax to the Education Legacy Trust Account.

**Hearing Date:** 4/4/17

**Staff:** Melissa Palmer (786-7388).

#### **Background:**

##### State Finance Committee.

The State Finance Committee (Committee) authorizes the issuance of all bonds and other state obligations, including financing leases for capital projects authorized in the capital and transportation budgets. The Committee also acts to refinance state debt when appropriate to reduce interest costs. The Committee is composed of the Governor, the Lieutenant Governor, and the State Treasurer.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### General Obligation Bonds.

General Obligation (G.O.) bonds are issued with a promise to the bondholders that the full faith and credit of the state will be used to pay what is owed to bondholders. G.O bonds are typically subject to the state debt limit. There are a number of exceptions to the debt limit on bonds backed by the full faith and credit of the state, including state G.O. bonds for transportation projects that are first reimbursed by the gas tax, and bonds issued by local school districts for school construction projects.

### Public Works Assistance Account.

The Public Works Assistance Account (PWAA) was established in 1985 to encourage local government self-reliance in meeting public works needs, and to assist in financing critical infrastructure projects. Moneys in the PWAA must be used to make loans and give financial guarantees, and may also be appropriated to provide state match for federal dollars. Loan repayments and revenues from three tax sources have historically been deposited into the PWAA. However, in recent years, there have not been loans funded with the PWAA. Repayments and tax revenues have been redirected to the State General Fund or Education Legacy Trust Account. Revenues from the taxes are redirected statutorily from the Account through June 30, 2019.

### The Public Works Board Responsibilities.

The Public Works Board (Board) may make low-interest or interest-free loans from the PWAA to finance the acquisition, construction, repair, replacement, or improvement of the following local public works: bridges, streets, and roads; water systems; storm and sanitary sewage systems; and solid waste facilities, including recycling. For up to a maximum of 15 percent of the biennial capital budget appropriation, the Board may make loans for preconstruction, emergency, and capital facilities planning. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the Account. The Board may provide technical assistance. Existing debt or financial obligations may not be refinanced.

### Housing Finance Commission.

The Housing Finance Commission (Commission) is a finance authority that was established in statute by the Legislature to act as a financial conduit to make additional funds available at to help provide housing throughout the state. The Commission is financially self-supported and does not receive funding from the state. The Commission was also given the authority to develop, and has developed, additional financing programs such as the veteran homeownership down payment assistance program, sustainable energy trust program, aviation biofuel facilities and production bond program, and the beginning farmer financing program.

### **Summary of Bill:**

#### Findings and Intent.

The Legislature declares finds that it can be hard for local governments that borrow from capital markets rarely or in small amounts to access low-cost financing for public infrastructure projects, and that state tax revenues historically used to finance local government infrastructure are being redirected to support other state needs. The Legislature further finds that the state accesses capital markets frequently and can issue bonds for significantly less cost than many local governments. The Legislature intends to improve access to low-cost private market financing for

local government infrastructure projects by authorizing state issuance of public works bonds when local governments can meet certain requirements.

#### Tax Revenues.

Various tax revenues formally deposited in the PWAA are dedicated to other PWAA purpose. Beginning July 1, 2019, 6.1 percent of the Real Estate Excise Tax must be deposited into the Education Legacy Trust Account. The Solid Waste Tax revenues are continued to be deposited into the Education Legacy Trust Account, rather than returning the deposit to PWAA after June 30, 2019. The Public Utility Tax is continued to be deposited into the Education Legacy Trust Account, rather than returning the deposit to the PWAA.

#### Public Works Assistance Account.

The PWAA may be used for state match for the water pollution control revolving account, in addition to match for the drinking water assistance account. The PWAA may also be used for administration of the new Public Works Financing Assistance program. Preconstruction and emergency loans are no longer limited to 15 percent of the PWAA appropriation.

#### Public Works Financing Assistance Program.

In addition to the Public Works Board's authority to make loans to local governments for construction, pre-construction, and emergency public works projects funded through the PWAA, the Board is authorized to implement the Public Works Financing Assistance Program (New Financing Program). Through the New Financing Program, public works loans are made with proceeds of bonds issued by the state and the debt service is repaid by local governments.

Under the New Financing Program, eligible capital projects are those necessary to:

- provide safe and adequate drinking water;
- collect, manage, and treat wastewater and storm water;
- provide safe and efficient transportation, including public parking facilities, public transit facilities, and non-motorized transportation;
- provide facilities for safe and readily accessible recreation;
- provide flood control and floodplain management facilities;
- provide water supply improvements and water basin management enhancements, including culvert replacement projects;
- provide county or city criminal justice facilities;
- provide fire protection or emergency medical services facilities; and
- provide public library facilities.

To be eligible, local governments must demonstrate:

- difficulty accessing borrowing at reasonable rates from existing private credit markets;
- ability to reliably pay financing costs to retire the loan; and
- planned use of the bond proceeds for capital expenditures in compliance with the Internal Revenue Service code.

The Board must adopt criteria for prioritizing applications. Community benefit from the assistance must be measured by the financing cost differential under the New Program compared to private capital markets.

#### New Accounts Established.

The Public Works Financing Assistance Account (Bond Account) is created in the State Treasury. Proceeds from bonds issued to support projects under the New Program are to be deposited in the Bond Account. Moneys are to be spent only after appropriation.

The Public Works Financing Assistance Bond Repayment Account (Repayment Account) is established in the custody of the State Treasury. All repayments of loans made under the New Program are to be deposited in the Repayment Account, and although appropriations are not required, expenditures may only be made from the Repayment Account for debt service to retire the issued bonds.

#### Due Diligence and Accountability.

The Board is restricted from obligating funds without legislative bond authorization and appropriation of the proceeds. Contracts issued by the Board must ensure that loan disbursement amounts are predictable to meet project expenditures and that local government repayments cover the state's bond repayment obligations adequately and on time. In the event of a default by a local government under the New Financing Program, the contracts must allow the local government's treasurer to transfer any legally available funds to meet the obligations. If there are still insufficient funds, the state treasurer must withdraw an amount to meet the shortfall from the state revenues for distribution to local government. In the event there are still obligations due to be paid by the local government, the Board may take whatever actions are legally permissible.

To ensure that repayments are sufficient to cover debt service obligations, the Board may charge an additional amount on loans to create a reserve. If still insufficient, the Legislature must take action to raise repayment revenues including, but not limited to, collecting loan repayments directly from distributions to local governments. If revenues are still insufficient to meet projected debt service obligations, the State Finance Committee may not approve issuance of future bonds until revenues at least equal the debt service owed.

The Board must submit an annual report to legislative fiscal committees, the State Treasurer, and the Office of Financial Management.

The New Financing program is contingent on a ratification of a proposed constitutional amendment, Senate Joint Resolution 8201, which allows the state to pledge its full faith and credit for funds payable from local government infrastructure loan repayments.

#### Housing Finance Commission - Local Government Financing.

If the constitutional amendment is not adopted, then the Housing Finance Commission may develop and implement project to provide financing to local governments for infrastructure projects. The Commission is authorized to develop and implement a new program to provide financing to local governments for infrastructure projects. Infrastructure projects may include the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, water systems, storm and sanitary systems, solid waste and recycling facilities, and other municipal projects, facilities, and utilities. Local governments include cities, towns, counties, special purpose districts, port districts, school districts, and any other municipal corporation or quasi-municipal corporation.

In establishing this program, the Commission must develop eligibility criteria that will enable the Commission to choose applicants who are likely to repay the loans.

Under this program, the Commission has the authority to:

- issue revenue bonds;
- make or purchase loans to local governments for financing all, or part, of the costs of
- infrastructure projects;
- enter into financing agreements regarding the repayment of the loans;
- exempt interest on its bonds from federal income tax on bonds that are tax-exempt; and
- participate in government programs for the purpose of securing financing for infrastructure projects.

The Commission may not use its general funds to implement the program, but may use its general funds to administer the program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Sections 201 through 212, regarding the deposits of tax revenues take effect July 1, 2017. Sections 101 through 209 and 301 through 305, regarding the new Public Works Assistance Financing program are effective January 1, 2018, if the proposed amendment to the constitution is approved and ratified. If the proposed amendment to the constitution is not adopted and ratified, then sections 401 through 407 regarding the Housing Finance Commission Local Government Financing program is effective January 1, 2018.