

HOUSE BILL REPORT

ESSB 5033

As Passed House - Amended:

April 12, 2017

Title: An act relating to financing essential public infrastructure.

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 History:

Committee Activity:

Capital Budget: 4/4/17, 4/7/17 [DPA].

Floor Activity:

Passed House - Amended: 4/12/17, 95-2.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Modifies the Public Works Board (Board) composition and membership, including adding four legislative members.
- Authorizes the Board to provide grants, forgivable loans, and interest rate buy-downs for certain preconstruction, construction, and emergency projects.
- Removes a requirement that the Board submit a ranked list for funding and that the Legislature fund specific projects from the ranked list.
- Specifies criteria the Board must use when prioritizing funding for projects and adds requirements related to determining loan interest rates.
- Requires an annual report regarding the prior fiscal year activities related to applications received, projects funded, and obligations of funding.
- Increases the amount of funds for preconstruction and emergency projects from 15 percent to 20 percent of appropriated amounts and sets the amount of funds for grants at 10 percent of appropriated amounts.
- Establishes a system improvement team that reports to the Board.
- Requires the Board to provide a report regarding other financing options for local government infrastructure.

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.

- Continues the deposit of the Public Utilities Tax, the Solid Waste Tax, and 4.1 percent of the Real Estate Excise Tax into the Education Legacy Trust Account through fiscal year 2021.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended. Signed by 18 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Johnson, Koster, Kraft, MacEwen, Macri, Morris, Reeves, Riccelli, Ryu, Sells, Steele, Stonier and J. Walsh.

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.

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. The 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 PWAA 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 PWAA. 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 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 Amended Bill:

Public Works Projects.

The remediation of lead pipes in drinking water systems is specified as a public works project eligible for funding through the PWAA.

The Public Works Board (Board) Membership.

The number of members appointed from the cities and counties and public utilities and water districts is reduced from three to two members each. The number of members appointed from the public with special expertise is increased from four to seven. Members from the cities or counties may be a finance director or public works manager. Instead of jointly providing recommendations, the association representing the public utility districts and association representing the water and sewer districts each provide recommendations regarding the member representing their respective entities, instead of jointly providing recommendations.

The Board membership is increased from 13 to 17 by adding one member from each of the two major caucuses of the House of Representatives (House), appointed by the Speaker of the House, and one member from each of the two major caucuses of the Senate (Senate), appointed by the President of the Senate. Additionally, the Speaker of the House and President of the Senate may designate alternate members from the same caucus to attend meetings from which the appointed member will be absent, and the designee will have the same voting and participation powers as other Board members.

The Public Works Board Responsibilities.

The Board is authorized to develop a program that provides grants, forgivable loans, and interest rate buy-downs, additional assistance to leverage federal programs, and other opportunities to target deeper financial assistance to communities with economic distress or projects that would result in increases in residential utility rates that exceeded a determined percentage of the median household income. The authority to provide grants applies to preconstruction, emergency, and construction projects.

The requirement that the Board must submit to the Governor and Legislature a ranked project list is removed. The criteria the Board would have used to develop a ranked list must be used to prioritize, providing funding for public works projects. The requirement that the Legislature provide funding for a specific list of projects is removed. The Board may not obligate funding until the Legislature appropriates funding for public works projects, rather than a specific list. The Board must provide annual reports regarding the applications received, projects funded, amount of funds disbursed, loan payments received, amount outstanding, and timing of obligations. Additionally, the Board must adopt policies and procedures to maximize local government consideration of other funds to financing projects.

For preconstruction and construction loans or grants, the Board must contractually require an investment-grade-efficiency audit for public facilities for which an audit is reasonably obtainable, and may allow the audit costs to be financed as part of the loan. The Board may require local governments to have sustainable asset management best practices in place, provide long-term financial plans to demonstrate sound maintenance and repayment and undergo value planning at the predesign stage. For loans, the Board's general authority to make "low-interest or interest-free" loans to local governments for construction, emergency public works projects, and preconstruction activities is replaced by a requirement that the Board base interest rates on the average daily market interest rate for tax-exempt municipal bonds as published in the Bond Buyer's Index for 30 to 60 days prior to the start of the application cycle when the project is supported by a ratepayer base of at least 50,000. Projects with a repayment period of five to 20 years must receive an interest rate of at least 50 percent of the average daily market interest rate, and projects with a repayment period under five years must receive an interest rate that is 25 percent of the average daily market interest rate. When average daily market interest rates reach 9 percent or greater, the Board may cap interest rates on loans with five to 20-year repayment periods at 4 percent and loans with less than five-year repayment periods at 2 percent.

In addition, the Board may allow for reduced interest rates, extended repayment periods, or forgivable principal loans for projects that meet standardized hardship criteria or are supported by a rate base of less than 50,000. The maximum amount the Board is authorized to provide for preconstruction and emergency loans is increased from 15 percent to 25 percent of the PWAA appropriation. Additionally, the Board may provide grants for preconstruction, emergency, and construction projects. Grants are limited to no more than 10 percent of the PWAA appropriation.

System Improvement.

An interagency, multijurisdictional system improvement team (Team) is established until June 30, 2021. The membership of the Team consists of representatives from state infrastructure programs and other entities including the associations representing cities, counties, public utility districts, water and sewer districts, general contractors, and building trades. The Team is tasked with identifying, implementing, and reporting on system improvements.

Financing Report.

The Board, in consultation with stakeholders, must provide a report by December 2018, to the Legislature regarding other financing approaches that could be established to provide

access to financing for local governments that have challenges in accessing existing private credit markets.

Public Works Assistance Account.

The tax revenues from the Solid Waste Tax, Public Utilities Tax, and Real Estate Excise Tax continue to be deposited into the Education Legacy Trust Account through fiscal year 2021.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) The Office of the State Treasurer has expressed concern with the new financing program created in Engrossed Substitute Senate Bill (ESSB) 5033. The interest rates offered through the current program administered by the Board cannot be matched by any of the policies in ESSB 5033. The bonding proposals do not offer viable options because they will have interest rates between 4 to 7 percent. There are many communities that do not have the ability to secure funding in the open bond market due to the rates. Engrossed Substitute Senate Bill 5033 does not address this barrier.

(Other) The policies in ESSB 5033 will not take care of distressed, rural communities. The financing approaches do not respond to their needs. The interest rates under these financing programs exceed the financing rates rural communities can afford. These communities need critical infrastructure. The policies offered in House Bill (HB 1677) provide a way to meet rural community needs. The Board is successful and it is not something that should end. The PWAA has provided critical money to fund infrastructure projects. It takes a real effort to startup a successful program. There are a lot of opportunities to modernize the Board, which are reflected in the policies in HB 1677. All communities need functioning infrastructure and water without pollutants. This bill permanently diverts the funding from a successful program. Bolstering the current Public Works program should be a priority. The current program needs an adequate source of revenue. The Legislature should commit to allowing the revenue stream to return to the PWAA. The ESSB 5033 includes interesting financing approaches, but there are many concerns about how the programs would really work. An alternative approach would be to have the Board evaluate and report on different financing models. There could be a value in bond pooling, but the policies in ESSB 5033 are in no way a replacement to the current Public Works program or a way to replace the permanent revenue diversion. It is critical to ensure that the current Public Works program is maintained and that the polices in HB1677 move forward.

Persons Testifying: (In support) None.

(Opposed) Senator Wellman; Mara Malchulsky, Washington Public Works Board; and Brian Wesemann, Kelso Lexington Flood Control District.

(Other) Steve Lindstrom, Sno-King Water District Coalition; Jerry VanderWood, Washington Associated General Contractors; Joe Kendo, Washington State Labor Council; Bill Clarke, Washington Public Utility District Association; Carl Schroeder, Association of Washington Cities; Gary Rowe, Washington State Association of Counties; and Scott Hazlegrove, Washington Association of Sewer and Water Districts.

Persons Signed In To Testify But Not Testifying: None.