HOUSE BILL REPORT
HB 2561

As Reported by House Committee On:
Capital Budget

Title: An act relating to creating jobs by funding construction of energy cost saving improvements to public facilities.

Brief Description: Funding construction of energy cost saving improvements to public facilities.

Sponsors: Representatives Dunshee, Williams, White, Seaquist, Darneille, Eddy, Dickerson, Sells, Rolfes, Chase, Green, Appleton, Sullivan, Simpson, Nelson, Hudgins, Jacks, Hunt, Hasegawa, Ormsby, Moeller and Roberts.

Brief History:
Committee Activity:
Capital Budget: 1/13/10, 1/14/10 [DP].

Brief Summary of Bill

- Authorizes the State Finance Committee to issue $861 million in general obligation bonds, to be known as Jobs Act Bonds (Act), for the purpose of creating jobs by constructing capital improvements that lead to energy-related cost savings in public schools, state colleges and universities, and other public facilities.
- Appropriates funds for grants to public school districts, public higher education institutions, state and locally-owned facilities, and facilities owned by subdivisions of the state.
- Directs the Secretary of State to submit the short title, intent and bond authorization sections of the Act to the people for adoption and ratification or rejection in the next general election to be held in the state.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 9 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Blake, Chase, Jacks, Maxwell, Morrell, Orwall and White.

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.

Minority Report: Do not pass. Signed by 6 members: Representatives Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Hope, McCune and Smith.

Staff: Nona Snell (786-7153).

Background:

Washington issues general obligation bonds to finance projects authorized in the capital and transportation budgets. General obligation bonds pledge the full faith and credit and taxing power of the state towards payment of debt service. Bond authorization legislation generally specifies the account or accounts into which bond sale proceeds are deposited, as well as the source of debt service payments. When debt service payments are due, the State Treasurer withdraws the amounts necessary to make the payments from the State General Fund and deposits them into bond retirement funds.

The State Finance Committee, composed of the Governor, the Lieutenant Governor, and the State Treasurer, is responsible for the issuance of all state bonds.

The amount of state general obligation debt that may be incurred is limited by constitutional and statutory restrictions; however, Article VIII, section 3 of the Washington Constitution allows for voter-approved bonds outside the constitutional debt limit.

The Energy Savings Performance Contracting (ESPC) program started in 1986. The Department of General Administration (GA) manages the state ESPC program pursuant to state statute. Through the ESPC program, facility owners contract for energy improvement construction projects resulting in energy-related savings that cover the cost of the improvements. The amount of the energy-related savings is at least the cost of the construction project minus incentives from utilities. An Energy Savings Contractor (ESCO) guarantees the savings will cover the cost of the project over a period of generally seven to 10 years. The guarantee is in place for the first year of the project and up to 10 years if the owner complies with ESCO monitoring and verification requirements. Public facility owners may also contract for ESPC services through a request for qualifications process of their own, instead of using GA's services.

Each biennium, the GA pre-qualifies ESCOs through a request for qualifications process. There are currently 10 ESCOs on the GA's list of approved contractors. The ESCOs audit ESPC projects and contract for the construction.

Referendum bills are proposed laws referred to the voters by the Legislature. Referendum bills must be filed with the Secretary of State within 90 days after the final adjournment of the legislative session in which the act was passed. They may be submitted at the next general statewide election or at a special election ordered by the Legislature. The general election is held on the first Tuesday following the first Monday in November. The 2010 statewide general election is on November 2.

Summary of Bill:

The State Finance Committee is authorized to issue general obligation bonds in the amount of $861 million to create jobs by constructing capital improvements to public facilities for energy costs savings. The bonds are to be known as the Jobs Act Bonds. The full faith and credit of the state is pledged to pay the principal and interest on the bonds.

The Department of Commerce, in consultation with the GA and Washington State University's (WSU) Energy Program, must administer the Jobs Act.

The GA must develop guidelines for the implementation of energy savings performance contracting projects by December 31, 2010.

An appropriation in the amount of $858.5 million is made to the Department of Commerce from the Washington Works Account, which is created to receive proceeds from the bond issuance. The appropriation is for grants to public K-12 schools, public higher education institutions, state and locally-owned public facilities, and facilities owned by subdivisions of the state for energy cost savings improvements and related projects that result in energy and utility and operational cost savings. Related projects are projects that must be completed in order for the energy efficiency improvement to be effective.

The Department of Commerce must consult with the GA and the WSU Energy Program to establish a competitive process and evaluate applications. The Department of Commerce determines the final grant awards.

Grants must be awarded in competitive rounds:

- Round 1: grants to K-12 public schools and public higher education institutions. At least 5 percent of the total grant round must be set aside for small K-12 school districts;
- Round 2: grants to K-12 public schools, public higher education institutions, state agencies, local governments, and subdivision of the state. Up to 75 percent of the total grant round must be awarded to K-12 school districts and higher education institutions. At least 5 percent of the 75 percent must be set aside for small K-12 school districts; and
- Additional competitive rounds: grants distributed the same as in Round 2.

Small school districts, for the purposes of the bill, have fewer than 1,000 full-time equivalent students.

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

1. Leverage ratio: the higher the leverage ratio of non-state funding sources to state Jobs Act grant, the higher the project ranking;
2. Energy savings: the higher the energy savings, the higher the project ranking; and
3. Expediency of expenditure: the more ready a project is to proceed, the higher the project ranking.

Projects not using ESPC must verify energy-related cost savings for 10 years, follow the GA's ESPC program guidelines, and employ a licensed engineer for the energy audit and construction. The Department of Commerce may require third-party verification of energy-related savings if a project is not using an ESCO selected through the GA's request for qualifications (RFQ) process. Third-party verification must be conducted by an ESCO from GA's list of contractors selected through the RFQ, or by a project or educational service district resource conservation manager.

The Department of Commerce may only award funds to the top ranked 85 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.

The Department of Commerce must use bond proceeds to pay for one-half of the cost of preliminary audits if the project does not meet the owner's predetermined cost-effectiveness criteria.

Energy Savings Performance Contractors may not charge the cost of the investment grade audit to the project owner if the audit demonstrates that the project does not meet the owner's predetermined cost-effectiveness criteria.

The Department of Commerce may charge projects administrative fees and may pay the GA's and WSU's Energy Program administration fees.

The Department of Commerce and the GA must report to the Legislature and the Office of Financial Management on the timing and use of the grant funds and program administration functions and fees by the end of each fiscal year until the funds are fully expended and all savings verification requirements are complete.

The State Treasurer must determine a mechanism to allow Washington residents to purchase the Jobs Act Bonds.

The title, intent, and bond authorization proposal is referred to a vote of the people at the next general election. The ballot title is "The legislature has passed House Bill No . . . . (this act), concerning job creation through school and other public capital projects. This bill would promote job creation by authorizing bonds to construct energy operational cost savings improvements and related projects to schools and other public facilities."

If the pertinent parts of the act are not approved by the voters, the entire act is null and void.

Appropriation: The sum of $858.5 million is appropriated from the Washington Works Account created in the bill.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, if sections 101 through 203 of this act are not approved by the voters by December 1, 2010, this act is null and void.

Staff Summary of Public Testimony:

(In support) The amount of the appropriation is $850 million because that amount will allow for retrofitting buildings across the state and will catalyze $2.5 billion in work, which will create 38,000 jobs and save the taxpayers $190 million. Most of the savings will be at the local level.

The work will lead to better, healthier schools, healthier environment, and buildings that last longer. Projects funded by the bill will address critical facility needs that do not disappear because they are unfunded. This is also an opportunity to address sick building syndrome.

Many examples of energy improvement work are completed through Energy Savings Performance Contracting. However, sometimes those types of projects do not make financial sense because the cost of completing them is too high. The grants will catalyze other, related work, like leaking roofs, allowing the energy improvement projects to be feasible.

The state has lost 165,000 jobs in this economy, and this program will put 38,000 people, not including indirect jobs, to work. Creating jobs right now is a plus. We should think about every way to create jobs. The work funded by the bill will put construction workers back to work. The industry has been particularly hard hit by the current economic slowdown. For every $1 million, 20 direct jobs are created or preserved, along with six vendor and suppliers' jobs. The bill also creates opportunities for apprenticeships.

This program is self-financing. The revenue source to pay debt service could be the energy savings, but because the state provides funds for education and to state agencies, taxpayers will benefit when savings are retained.

The program is a net positive to the general fund for the first four years. The calculation of tax revenue does not include the multiplier.

A comparison between general fund debt service, transportation debt service, and the debt service on the bill shows that the debt service on the bill is small in comparison.

The current capital budget includes a $17 million pilot project that is similar to this proposal. The Office of the Superintendent of Public Instruction is working on the pilot program. Those state funds catalyzed $43 million in work with other funds from utilities and contractors. This amount creates 120,000 jobs. These jobs are created quickly. When new buildings are constructed, they go through a design process, environmental review, and building process to get jobs going. This program works because an Energy Savings Performance Contractor does an energy audit, determines which projects are needed, the loan is arranged, and the work starts quickly.

If the voters pass the referendum in November, work will start in the spring of next year.

The Association of General Contractors job calculator indicates that 30 jobs a year are created with $1 million on construction projects. This work will probably result in more jobs because rehabilitation jobs take longer than new jobs.

Projects will be judged by the leverage ratio, which requires a lot of energy savings and will result in quality projects.

The bill has two tracks: (1) Energy Savings Performance Contracting, which requires matching funds in the bill. If savings are not realized, the energy savings contractor pays the debt service from the loan; and (2) Projects that do not use Energy Savings Performance Contracting must employ an engineer and must track energy savings for ten years.

The preference is that everyone in the program goes through Energy Savings Performance Contracting, but some facility owners have the ability to make the improvements on their own. Energy improvements in buildings will help the state meet green house gas emission reduction requirements. The proposal will help school districts that have difficulty or cannot pass bonds.

Twenty-one community colleges have used Energy Savings Performance Contracting, and many other community and technical colleges are in a good position to use the program. Western Washington University and Central Washington University have made energy improvements that have resulted in savings and believe they can use the proposed program.

The Commissioner of Public Lands supports the bill.

(In support with concerns) Voters may be confused by voting on a referendum bill and voting on school bonds in the fall.

The leverage ratio requirements may eliminate small, poorer school districts from competing.

The consequences of not meeting cost savings thresholds is not addressed, and operational cost savings will be hard to measure.

(Neutral) The economy in 1969-72 was similar to the current situation.   The 1960s were the boom times, and then the state hit a slump. The economy was not as diverse as it is now, and Boeing was not doing well. The Legislature came into session and struggled to figure out what do to about economic recovery. Several constitutional amendments were run, including one that allowed credit for economic recovery as long as it was for public purposes, one that changed the debt limit ceiling, and other proposals were made to help the economy.

In a program called Jobs Now, $60 million was proposed to build facilities to attract industry into the state to create jobs. Another program called Washington Futures included six series of bond issues sent to the voters separately. They included: (1) $225 million for waste disposal, including water pollution, sewers, and storm water; (2) $75 million for water supply, mainly agricultural water supply; (3) $50 million for public transportation; (4) $40 million for recreation and parks;(5) $25 million for social and health projects; and (6) $50 million for higher education including vocational education. The voters passed all but the transportation issuance. The issuances were effective because of the economic times.

Public libraries and universities should use the program created in the bill.

This Legislature has increased safety by mapping all K-12 schools and one-half of the community colleges. This program will make public buildings safer and should be used for mapping.

(Opposed) The typical payback estimates from energy improvements are projected, they are not actual amounts over the life of the project. Audits for the similar federal program found that the savings did not line up with projections.

The idea of the bill is fine, but the timing is not. Voters will be confused by voting on the referendum bill and school bonds, which will put school bonds at a disadvantage. Also, the debt service is paid from the general fund, leaving less for schools' operating budgets.

The bill is too prescriptive because it only identifies one procurement process. The Department of General Administration should be required to develop two sets of guidelines, not just one for Energy Savings Performance Contracting.

Persons Testifying: (In support) Representative Dunshee, prime sponsor; Miguel Perez-Gibson, Climate Solutions and Northwest Energy Coalition; Sheila Riggs, Washington State University Extension Energy Program; Jim King, Washington State HVAC/R Association; Dave Johnson, Washington State Building and Construction Trades Council; Cody Arledge, Sheet Metal Workers Local 66; Steve Dupont, Central Washington University; Jane Vroman, Western Washington University; Steve Ward, Centralia College; Wayne Doty, State Board of Community & Technical Colleges; William Frare, Department of Natural Resources; Tom Lopp, Office of the Superintendent of Public Instruction; Lucinda Young, Washington Education Association; Scott Harbers, Trane Energy Solutions; Mike Dean, McKinstry; Cindy Zehnder, Northwest Energy Efficiency Council; and Greg Lee.

(In support with concerns) Nancy Moffatt, Washington Association of School Business Officials; and Mitch Denning, Alliance of Education Association.

(Neutral) Todd Myers, Washington Policy Center; and Ralph Munro, former Secretary of State.

(Opposed) Laurie Cloud, Tahoma School District, Puget Sound Schools Coalition; and Chuck Collins, Cascade Power Group.

Persons Signed In To Testify But Not Testifying: None.