HOUSE BILL REPORT
HB 1915

As Reported by House Committee On:
Capital Budget

Title: An act relating to state assistance for financing local government infrastructure.

Brief Description: Concerning state assistance for financing local government infrastructure.

Sponsors: Representatives Dunshee, Warnick, Ormsby, Condotta, Sells, Anderson, Green and Armstrong; by request of State Treasurer.

Brief History:

Committee Activity:

Capital Budget: 2/15/11, 2/21/11 [DPS].

Brief Summary of Substitute Bill

- Authorizes the State Treasurer to enter into contingent loan agreements with local governments to provide credit support for financing public works projects and authorizes the Public Works Board to make loans related to such agreements.
- Modifies the memberships of the Public Works Board and the Community Economic Revitalization Board.
- Adds flood control levees to the list of projects eligible for loans from the Public Works Assistance Account and removes streets, roads, and bridges from the eligibility list.
- Adds new conditions that local governments must meet to qualify for a loan or contingent loan agreement.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Jacks, Jinkins, Lytton, Pearson, Smith and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Asay.

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.

Staff: Meg Van Schoorl (786-7105).

Background:

Public Works Assistance Account.

The Public Works Assistance Account (Account), commonly known as the Public Works Trust Fund, was created by the Legislature in 1985 to provide a source of loan funds to assist local governments and special purpose districts with infrastructure projects. The Public Works Board (Board) is authorized to make low-interest or interest-free loans from the Account to finance the acquisition, construction, repair, replacement, or improvement of the following systems: bridges, streets, and roads; water, storm, and sanitary sewage systems; and solid waste facilities, including recycling. The Board also makes loans for pre-construction, emergency, and capital facility planning purposes. All local governments except port districts and school districts are eligible to receive loans.

The Account receives dedicated revenues from the public utility tax on water and sewer service, the solid waste collection tax, a portion of the real estate excise tax, and loan repayments. Money in the Account must be used to make loans, give financial guarantees to local governments for public works projects, and may also be appropriated as the required 20 percent state match to the federal Drinking Water State Revolving Fund jointly managed by the Board and the Department of Health. Appropriations from the Account are made in the capital budget, but the Board's ranked list of recommended construction projects is submitted annually to the Legislature in a separate bill. Funds cannot be obligated by the Board until the Legislature has appropriated funds for a specific list of projects. Loans approved by the Board for pre-construction, emergency, and planning purposes are not subject to legislative approval.

The Board, staffed by the Department of Commerce (Commerce), includes 13 voting members: two elected officials and one public works manager representing cities; two elected officials and one public works manager representing counties; three members representing public utility and water-sewer districts; and four members representing the general public.

Community Economic Revitalization Board.

The Community Economic Revitalization Board (CERB) was created by the Legislature in 1982 to help communities finance infrastructure, facilities, and sites that foster economic vitality and diversification. Entities eligible to apply for CERB financing are federally recognized Indian tribes and local governments including port districts, special purpose districts, and other municipal and quasi-municipal corporations that provide for public facilities. The CERB provides low-interest loans and, occasionally, grants to finance planning, pre-development, and construction of public facilities for the purposes of job creation, retention, or expansion. Eligible systems are: bridges and roads; domestic and industrial water; earth stabilization; sanitary and storm sewers; railroad; electricity; telecommunications; transportation; natural gas; general purpose industrial buildings; or port facilities. Projects must provide convincing evidence that a specific private development or expansion is ready to occur and will only occur if the public facility improvement is made, or that the project will result in creation of significant private sector jobs or private capital investment. The CERB must approve at least 75 percent of the first $20 million available and at least 50 percent of any additional funds for projects in rural counties. Grants may not comprise more than 25 percent of all financial assistance provided by the CERB in a single biennium.

Financing for the CERB program is appropriated in the capital budget from the Public Facilities Construction Loan Revolving Account, which contains loan repayments and any funds directed to it by the Legislature.

The CERB, staffed by the Commerce, includes four non-voting agency directors and 16 voting members: four legislators; an economist; one official each of a city, county, port district, and federally recognized Indian tribe; one representative of the public; four representatives of small businesses; and two executives of large businesses.

Local Public Works Assistance Funds.

The RCW 36.135 authorizes a county to establish a local public works assistance fund (Local Fund) to make loans to finance public works projects wholly or partially within the county. "Public works projects" and "local government" are defined as they are in the Public Works Assistance Account statute. In collaboration with local governments within the county, a county legislative authority must develop a funding process that prioritizes projects necessary to address public health needs, substantial environmental degradation, or accommodate projected population and employment growth. A county providing loans to other local governments must consider a number of statutory factors including severe fiscal distress, citizen health and safety, project cost, number of communities served or funding the project, and project outcomes. No more than 50 percent of the monies loaned from a Local Fund in a calendar year may be loaned to the county and at least 25 percent of the monies anticipated to be loaned must be made available for projects in cities or towns. A county may deposit monies from its existing revenue sources into the Local Fund, and loan repayments must be deposited into the Local Fund. A county may require terms and conditions and may charge interest on loans.

Bond Rating Agencies.

There are three primary bond rating companies: Moody's, Standard & Poor's, and Fitch. Their ratings of state and local governments are an indication of how the rating analysts view the repayment risk. The rating then impacts what interest rate investors will require when purchasing state and local government bonds. Typically, the higher the bond rating is, the lower the interest rate. Each of the rating companies use an alphabetical rating system, with AAA or Aaa being best, then AA or Aa, followed by A, BBB or Baa, BB or Ba, and so on. Each rating company has a modifier for all but the top rating. For Moody's, a "1" following the letter rating means it is in the high end of the rating category, a "2" means it is in the middle of the category, and a "3" means it is in the lower end of the rating category. For Standard & Poor's and Fitch, a "+" signifies it is in the top half of the rating category, while a "-" indicates the lower half.

Summary of Substitute Bill:

Contingent Loan Agreements.

A contingent loan agreement is an agreement between the state and a local government in which the state provides an "absolute and unconditional" commitment to make a loan to the local government. The purpose of that commitment is to enhance the credit standing of the local government when it seeks financing through banks or the bond market.

The State Treasurer is authorized to enter into contingent loan agreements with local governments, and is authorized to charge a fee to the local government for the cost of creating the agreement. The Board is authorized to make loans to local governments pursuant to contingent loan agreements. A local government that enters into a contingent loan agreement with the State Treasurer, receives financing from a bank or the bond market for an infrastructure project and then is unable to make debt service payments, may apply to the Board for a loan to assist in making those debt service payments. The state's obligation to make such loans is subject to a legislative appropriation from the Account.

The Board and the State Treasurer are prohibited from pledging the full faith and credit or the taxing power of the state to repay local government obligations.

The Board and the CERB.

The Board and the CERB are required to consult with each other for coordination and consistency.

The Board membership is changed. Two legislators are added: one House member, appointed by the House Speaker, and one Senate member, appointed by the Senate President. Two CERB members are added: the chair of the CERB and one additional member elected by the CERB members. Four member seats are eliminated: one member each from cities, counties, and public utility districts, and one representative of the general public.

The CERB membership is changed. Instead of four legislators (two from each of the two major caucuses of the House and Senate), the CERB will have one House member, appointed by the House Speaker, and one Senate member, appointed by the Senate President. Legislative members will retain the authority to designate another member from the same chamber to attend the CERB meeting in their absence but no longer must designate a member belonging to the same caucus. The legislative designees will retain the power to participate in board deliberations but as is the case with other designees, will not have voting powers.

Public Works Projects and the Account.

Flood control levees are added to the list of projects eligible for loans from the Account. Streets, roads, and bridges are removed from the eligibility list.

Moneys from the Account may only be spent after appropriation.

Additional Criteria and Factors for Local Governments.

A local government must meet several new criteria to qualify for a loan or contingent loan agreement. It must have an equitable sewer user charge system for residential, commercial and industrial users that will provide for system maintenance and operation, and payment of all financial obligations. Sewer connection fees for new connections must reflect a fair share cost of infrastructure from which the new connections will benefit. The local government must have a capital wastewater facilities reserve fund dedicated to infrastructure and equipment replacement. A sewer use ordinance must restrict certain connections and wastes to protect the investment and enhance its stability and effluent quality. For projects involving repair, replacement, or improvement of a wastewater treatment plant or other facility for which an investment grade audit is available, the local government must have received such an audit in order to be eligible for a loan or contingent loan agreement.

Substitute Bill Compared to Original Bill:

The substitute bill: removes provisions related to distributing public utility and solid waste collection tax revenues to counties and the use of those revenues at the local level; allows any local government to pursue a contingent loan agreement with the State Treasurer and a related loan from the Board; removes provisions authorizing the Board to make grants; and maintains the addition of flood control levees to the list of eligible public works projects but removes streets, roads, and bridges from the current law list of eligible public works projects. The substitute bill also: retains the current law requirement that the annual construction loan list receive legislative approval and the current law terminology such as "public works project" rather than "infrastructure project;" removes the requirement that the Board consider a project's energy efficiency, Leadership in Energy and Environmental Design-certification or green building status when prioritizing projects; and removes provisions authorizing ongoing appropriations from the Account to the Department of Ecology programs. The substitute bill maintains the list of new conditions that local governments must meet, and adds a further condition: on a public works project for which an investment grade audit is available, the local government must have received such an audit in order to be eligible for a loan or contingent loan agreement. The substitute bill also retains the membership changes made to the Board and the CERB.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2011.

Effective Date of Substitute 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) Many people have approached the State Treasurer looking for alternative ways to fund infrastructure and stimulate jobs. This bill redirects revenues from existing utility and solid waste taxes to counties on a per capita basis, allowing local governments to use their own debt capacity to finance infrastructure projects. It offers credit enhancement for some mid-sized local governments through contingent loan agreements with the state. Financial advisers recommend a 10 percent reserve for contingency loan agreements. With this added security, bankers and the bond markets will offer lower interest rates, which could save 12 percent in borrowing costs over the life of a loan. It is unlikely that a local government will be unable to pay debt service. This is really about lowering their borrowing rate. Larger jurisdictions will not benefit from contingent loan agreements because they generally already have the highest bond ratings. The Board will be able to make grants to address small projects in jurisdictions that cannot support debt service payments. Allowing for a combination of grants and loans could speed up projects. Legislators are given seats on the Board to replace legislative approval of the loan list. We support removing legislative approval of the loan list. In some years, late approval of the list meant a missed construction season. The infrastructure funding system must be made simpler, faster, and cheaper. The nature of infrastructure has changed since the Public Works Trust Fund was created 25 years ago and we need flexibility to include courthouses, jails, public health facilities, and juvenile facilities as eligible systems. Attention must be paid to economies of scale in distributing $104 million among 39 counties, especially given the expense of infrastructure investments. Plan A is to fund the Board's 2012 construction loan list, which has ready-to-go projects and immediate construction jobs.

(In support with concerns) Local projects must be tied to prevailing wage requirements.

(With concerns) Neither water nor sewer taxes are equitably assessed across the state. People on exempt wells, none of the major users of water, and none of the jurisdictions on septic systems pay the taxes that are remitted into the Account. The taxes are paid largely by suburban and urban areas, yet this bill would redistribute revenues from those taxes to all counties on a per capita basis. We object to county appointment of local infrastructure boards because most of the money is collected by cities and would then be distributed by county boards. Since communities with higher bond ratings would not qualify for contingent loan agreements, there should be a limit to the amount placed in reserve for these agreements. Construction is down 35 percent in metropolitan areas and as much as 70 percent in outlying areas. There is an urgent need for state and local projects financed or authorized through the capital budget.

(Opposed) None.

Persons Testifying: (In support) Nona Snell and Wolf Opitz, Office of the State Treasurer; Rebecca Johnson, Washington State Labor Council; Scott Merriman, Association of Counties; and Ashley Probart, Association of Washington Cities.

(In support with concerns) Bob Abbott, Washington and Northern Idaho District Council of Laborers.

(With concerns) Bob Mack, City of Tacoma; and Dave Johnson, Washington State Building and Trades.

Persons Signed In To Testify But Not Testifying: None.