HOUSE BILL REPORT
HB 2040

As Reported by House Committee On:
Capital Budget

Title: An act relating to state assistance for financing infrastructure and economic development.

Brief Description: Providing for assistance for financing infrastructure and economic development.

Sponsors: Representatives Dunshee, Hunt, Sullivan, Jinkins, Reykdal, Ryu, Darneille, Moscoso, Cody, Goodman, Pettigrew, Appleton, Moeller, Hasegawa, Hudgins, Fitzgibbon, Green, Van De Wege, Haigh, Roberts, Stanford, Frockt, Billig, Ormsby, Upthegrove, Kenney, Rolfes and Maxwell.

Brief History:
Committee Activity:
Capital Budget: 4/5/11, 4/12/11 [DPS].

Brief Summary of Substitute Bill

- Establishes a task force to develop a means of using the state's money to finance public works infrastructure, student loans, and economic development, and make recommendations to the Legislature on specified topics by December 1, 2011.
- Authorizes the State Treasurer to enter into contingent loan agreements with local governments and the Public Works Board to make loans related to such agreements.
- Modifies conditions that local governments must meet to qualify for public works loans or contingent loan agreements, and removes streets, roads, and bridges from project eligibility.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Jinkins, Lytton, Moeller and Tharinger.

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 5 members: Representatives Warnick, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Asay, Pearson and Smith.

Staff: Meg Van Schoorl (786-7105).

Background:

The State Treasurer.

The State Treasurer (Treasurer) manages the state's funds, including investment of the state's operating cash in short-term, interest bearing accounts. The Treasurer's purpose in investing the funds is to generate returns while preserving the state's ability to access the funds. The Treasurer is also the Chair of the Public Deposit Protection Commission, which is responsible for protecting public deposits in banks and thrift institutions.

Department of Financial Institutions.

To legally operate as a bank or credit union in Washington, a financial institution must either be state- or federally-chartered. The Department of Financial Institutions (DFI) is the state agency responsible for monitoring and regulating state-chartered financial institutions. The Office of the Comptroller of the Currency or the Office of Thrift Supervision regulates federally-chartered banks and the National Credit Union Administration regulates federally-chartered credit unions.

Constitutional Provisions.

There are general constitutional prohibitions on lending of the state's credit and the gifting of public funds. Court decisions interpreting these provisions have established several criteria to determine whether state actions are a prohibited lending of credit or gift of public funds.

Public Works Board and Community Economic Revitalization Board.

Commonly known as the Public Works Trust Fund Program, the Public Works Assistance Account (Account) was created by the Legislature in 1985 to assist local governments and special purpose districts to finance public works projects. The Public Works Board (Board) is authorized to make low-interest or interest-free loans from moneys in the Account to finance the acquisition, construction, repair, replacement, or improvement of: bridges, streets, and roads; water, storm, and sanitary sewage systems; and solid waste facilities, including recycling. All local governments except port and school districts are eligible to apply. 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. Appropriations from the Account are made in the capital budget, and funds cannot be obligated by the Board until the Legislature has appropriated funds for a specific list of projects. The Board also may make loans for pre-construction, emergency, and capital facility planning purposes, and these are not subject to legislative approval.

The Community Economic Revitalization Board (CERB) was created by the Legislature in 1982 to provide loans and, occasionally, grants to finance infrastructure, facilities, and sites that foster economic vitality and diversification for the purpose of job creation, retention, or expansion. The CERB supports planning, pre-development, and construction of public facilities including: bridges and roads; domestic and industrial water; earth stabilization; sanitary and storm sewers; railroad; electricity; telecommunications; transportation; natural gas; general purpose industrial buildings; and 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. Local governments, special purpose districts, and federally-recognized Indian tribes are eligible to apply. 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.

Summary of Substitute Bill:

Findings and Intent.
The Legislature finds that: (1) lack of access to capital, credit, and lending opportunities increases the economic hardship of families and communities; (2) a direct state role in financing infrastructure projects that have public benefit would fill unmet community needs; and (3) the state should help students with limited financial resources to obtain adequate funds for school. To promote education, community and economic development, housing and public works projects, and help the state's economy, the Legislature intends to develop the means to use the state's financial capital and resources for initiatives that benefit the common good.

Task Force Membership, Authority, and Tasks.
A 20 member task force is established to develop a means of using the state's money to finance public works infrastructure, student loans, and economic development. The task force is to review and make recommendations on issues including: coordinating with existing public entities involved in local infrastructure and economic development; ways to streamline government infrastructure and economic development bureaucracies such as eliminating programs and consolidating accounts; alternate approaches to infrastructure financing; alternate ways to meet the state's banking and cash management needs; additional legislation; and other matters as it determines. By December 1, 2011, the task force must report to the appropriate legislative committees with recommendations and an implementation plan.

The House Speaker and the Senate President must appoint the following members to the task force: four legislators (voting); one member from a state-chartered financial institution and one member from a federally-chartered financial institution (both voting); two members representing small business owners (voting); seven citizen members representing interests of labor, education, housing financial, agricultural, economic development, and infrastructure (voting); and two members representing local governments (nonvoting). Additional nonvoting members are the DFI Director and the Treasurer, or their designees, and a member representing the Board.

The legislative members must convene the task force within 30 days of the effective date, and the task force must choose its chair. The Senate Committee Services and the House Office of Program Research must provide staff support. The DFI and Treasurer must provide information as the task force chair reasonably requests. Provisions are included that authorize task force contracts with technical experts, receipt of public or private aid, creation of advisory committees, reimbursement of members' travel expenses, and payment of task force expenses.

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.

Until July 1, 2013, the Treasurer is authorized to enter into contingent loan agreements with a local government and is authorized to charge a fee to the local government to recover the costs of creating the agreement. After that date, contingent loan agreements must be entered into in the manner determined by the Legislature.

The Board is authorized to make loans to a local government pursuant to a contingent loan agreement. A local government that enters into a contingent loan agreement, 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 such a loan. The state's obligation to make a loan pursuant to a contingent loan agreement is subject to the Legislature providing amounts from time to time from the Account in an appropriations act.

Public Works Assistance Account and Loan Program.
Moneys from the Account may only be spent after appropriation.

Streets, roads, and bridges are removed from the list of public works projects that are eligible for financing from the Account.

A local government must meet several new criteria to qualify for a loan or contingent loan agreement, including: equitable sewer user charge systems, fair fees for new sewer connections, dedicated capital wastewater facilities reserve funds, and sewer use ordinance restrictions on certain connections and wastes. 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.

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

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

Substitute Bill Compared to Original Bill:

The bill as amended clarifies that it is the Legislature, not the task force, that will determine how contingent loan agreements are to be entered into after July 1, 2013.

Appropriation: None.

Fiscal Note: Available.

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) Currently, the state deposits tax revenues into a concentration account at the Bank of America, which exports the profits it makes. The concept of this bill is to keep the taxpayers' money working within the state, providing small business access to capital, economic development project funding, and local infrastructure financing. The model is the Bank of North Dakota, which is a genuine financial institution that does not compete with commercial banks and is not an economic development engine that could jeopardize state revenues. By practicing fractional reserve lending in the manner of private banks, a state financial institution could leverage its capital base nine or 10 times. A white paper by the Center for State Innovation has projected a return of $8.5 million on each $100 million in state start-up capital by year five. This bill itself does not create a financial institution. It creates a task force to come up with an operational framework, initial capitalization and loan guarantee options, and an implementation plan for legislative consideration in 2012.

(With concerns) For the first time, this bill directs that the interested parties come together to assess where there are areas for private sector banks and the state to cooperate on financing of economic development-related projects. Financial institutions will participate in good faith on the task force. There is great opportunity but also great risk to the state if the bank's capitalization and infrastructure are not structured appropriately. The state's current banking relationship with financial institutions deploys capital on a short-term basis safely and the costly infrastructure is not one that the state would want to replicate.

(Opposed) None.

Persons Testifying: (In support) Representative Hasegawa, prime sponsor.

(With concerns) Denny Eliason, Washington Banker's Association.

Persons Signed In To Testify But Not Testifying: None.