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## Capital Budget Committee

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### ESB 5624

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

**Sponsors:** Senators Keiser, Honeyford and Conway.

#### Brief Summary of Engrossed Bill

- Subject to voter ratification of a constitutional amendment, authorizes a pledge of the state's full faith, credit and taxing power to guarantee bonds issued by or on behalf of local governments for essential public infrastructure projects.

**Hearing Date:** 3/17/15

**Staff:** Meg VanSchoorl (786-7105).

#### **Background:**

##### Article VIII, section 1 of the State Constitution.

Article VIII, section 1 authorizes the state to contract debt. It also establishes a state debt limit. The State Treasurer may not issue any bonds that would cause the debt service on any new and existing bonds to exceed this limit. Under a constitutional amendment approved by the voters in 2012, the state debt limit is currently 8.5 percent of the average of the prior six years' general state revenues, defined as all unrestricted state tax revenues. Debt is subject to this limit if it is either backed by the full faith and credit of the state or is payable from general state revenues

In 1999 Washington voters passed an amendment to Article VIII, section 1 authorizing a pledge of the full faith, credit and taxing power of the state to guarantee voter-approved general obligation debt issued by school districts. The guarantee does not remove the debt obligation of the school district. This guarantee is not state debt so it does not affect calculation of debt subject to the debt limit. According to the Office of the State Treasurer, school bonds totaling over \$17.1 billion have been guaranteed by the School Bond Guarantee program subsequently established under chapter 39.98 RCW and to date, the state has not been required to pay debt service.

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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.*

### State Finance Committee.

The State Finance Committee (Committee) authorizes the issuance of all bonds and other state obligations, including financing leases, that finance 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 State Treasurer.

### Public Works Assistance Account Program and Public Works Board.

The Public Works Assistance Account Program (Account) 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 Account must be used to make loans and give financial guarantees, and may also be appropriated to provide state match for federal dollars under the Drinking Water State Revolving Fund.

The Public Works Board (Board) is staffed by the Department of Commerce and includes 13 voting members. The Board may make low-interest or interest-free loans from the Account 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. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the Account.

Historically, loan repayments and revenues from three tax sources have been deposited into the Account. However, beginning with the 2009-11 biennium, the Legislature has transferred cash from loan repayments and redirected tax revenues from the Account to the State General Fund and the Education Legacy Trust Account. Revenues from the taxes are redirected statutorily from the Account through June 30, 2019. These transfers and redirections are projected to result in a decrease of \$800 million in revenues to the Account from FY 2014 to FY 2019.

### Credit Enhancement.

Credit enhancement is a means by which a borrower endeavors to improve creditworthiness in order to gain greater access to capital markets and more favorable terms. A potential borrower may use a third party guarantee, additional collateral, or insurance to decrease investor concerns related to risk of a default.

### **Summary of Bill:**

#### Findings and Intent.

For local governments that need to borrow capital infrequently or in small amounts to finance essential public infrastructure, access to low-cost financing is unreliable. One reason is that state tax resources historically used to finance local government infrastructure are in demand to support other essential state needs. The Legislature intends to improve access to low-cost private market financing for public infrastructure through credit enhancements and pooling.

#### Authorization to Pledge the State's Full Faith, Credit and Taxing Power.

A pledge of the state's full faith, credit and taxing power to guarantee the full and timely payment of debt service on bonds issued for essential public infrastructure projects is authorized.

If a proposed amendment to Article VIII, section 1 of the state Constitution that guarantees local government obligations to finance essential public infrastructure is approved and ratified by state voters at the next general election, this act takes effect on January 1, 2016. If not, this act is void.

Only bonds issued validly after the effective date can be guaranteed.

#### Definitions.

Definitions are provided for "bonds," "credit enhancement program," "essential public infrastructure project," "guaranteed bonds," "paying agent," and "public works board".

"Local government" is defined as any county, city, town, port, water-sewer district, public utility district, metro-park district, park and recreation district, fire district, emergency medical services district, flood zone district, irrigation district, or library district.

The Committee, the Board, and the State Treasurer have the primary responsibilities for establishing a process to provide credit enhancements and pooling of local government bonds.

The Committee must, by rule, establish financial criteria to be met by local governments before any credit enhancement can be provided and may, by rule, establish a program authorizing the State Treasurer to issue bonds in a pool to support multiple projects approved by the Board.

The Board is authorized to review and approve "essential public infrastructure projects", which are capital projects by eligible local governments necessary for:

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

The Board must: adopt rules to establish criteria to determine local government eligibility, project necessity, and benefit; must work with the State Treasurer to determine timing and amount of financing assistance, based on capital market interest; and, must submit a prioritized, approved list of eligible projects to the State Treasurer.

The State Treasurer must determine which local governments meet the financial criteria adopted by the Committee.

A local government's governing body may request that the State Treasurer issue a certificate as evidence of the state's guarantee of its bonds for essential public infrastructure. If the local government meets eligibility under the Committee rules and the Board have approved the

project, then the State Treasurer must issue the certificate. The guarantee may be relied upon as covering bonds issued within 120 days of receiving the certificate.

Provisions Related to Local Government Inability to Pay Debt Service.

Provisions are set out related to responsibilities of local government treasurers for transferring moneys to pay debt service and for notifying the State Treasurer when unable to make such payments.

A local government that has issued guaranteed bonds for which the state has paid any debt service must reimburse all money drawn by the State Treasurer on its behalf, as well as interest, fees and charges. The State Treasurer may take legal action against the local government to compel repayment. The state has the same substantive and procedural rights as a guaranteed bond holder, and is subrogated to the rights of guaranteed bond holders. The local government must pay any fees and costs the state incurs in repayment recovery efforts. The local government may not issue additional bonds except for refunding bonds unless approved by the State Treasurer.

If the State Treasurer determines that a local government is unable to meet its debt service obligations on an ongoing basis, the Legislature must include specific appropriations to meet these obligations in every biennial appropriations act.

The Public Works Assistance Account.

Two additional uses are authorized for moneys in the Account: to administer the Essential Public Infrastructure Project program; and, to offset or reduce the State Treasurer's administrative and bond issuance fees under the program.

Existing authority to use the Account for capital facilities planning is removed as are authorities for special uses of the Account in prior biennia.

**Appropriation:** None.

**Fiscal Note:** Requested on 3/13/2015.

**Effective Date:** The bill takes effect on January 1, 2016, if a proposed amendment to Article VIII, section 1 of the state Constitution that guarantees local government obligations to finance essential public infrastructure is approved and ratified by state voters at the next general election. If not, this act is void.