

# HOUSE BILL REPORT

## ESHB 1677

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### As Passed Legislature

**Title:** An act relating to local government infrastructure funding.

**Brief Description:** Concerning local government infrastructure funding.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representatives Peterson, Pike, Senn, McBride, DeBolt, Macri, Stonier, Riccelli and Fey).

#### **Brief History:**

##### **Committee Activity:**

Capital Budget: 2/14/17, 3/21/17 [DPS].

##### **Floor Activity:**

Passed House: 6/29/17, 94-0.

Passed Senate: 6/30/17, 46-3.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- 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.

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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.*

- 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 2023.

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## HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Dye, Johnson, Koster, Kraft, MacEwen, Macri, Morris, Reeves, Riccelli, Ryu, Sells, Steele, Stonier and J. Walsh.

**Staff:** Melissa Palmer (786-7388).

### **Background:**

#### 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.

#### Public Works Board Membership.

The Public Works Board (Board) is staffed by the Department of Commerce and 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.

#### The Board Responsibilities.

The 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.

The Board must consider a number of factors in prioritizing projects: health and safety; unemployment rate; the Puget Sound Partnership Action Agenda; fiscal distress; permitting processes; relative project costs; number of communities served or funding the project; water

system health and safety violations; Evergreen community recognition; and relative project benefits.

By November 1 of each even-numbered year, the Board must develop and submit to legislative fiscal committees a prioritized recommended funding list of public works construction projects. The Legislature may remove projects from the list, but may not change the priority order of the Board's recommendations. Funds cannot be obligated by the Board until the Legislature has appropriated funds for a specific list of projects.

In both the 2013-15 Capital Budget and the 2015-2017 Capital Budget, the Legislature required the Board to develop a process for numerically ranking applications for construction loans, and to use an alternative list of consideration factors in order to assign that ranking. In addition, the Capital Budget required the Board to:

- base loan interest rates for construction projects on tax-exempt municipal bond interest rates as published in the Bond Buyer's Index and provide special rates and terms for projects that meet standardized hardship criteria;
- contractually require an investment-grade-efficiency audit for public facilities for which an audit is obtainable, and allow the audit costs to be financed as part of the loan; and
- implement policies and procedures to maximize local government use of federally funded drinking water and clean water state revolving funds, including those operated by the Department of Ecology (DOE) and the Department of Health (DOH).

The 2015-17 directive further specified that projects "eligible" for the DOE and DOH revolving funds are not eligible for the Board construction loans and defined what "eligible" means.

### **Summary of Engrossed Substitute 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 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 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 pre-design 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 rate payer 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 Legacy Trust Account through fiscal year 2023.

**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) The goal is to take this opportunity to look at improving the PWAA program. This excellent legislation supports good paying jobs. The state should play a strong role in supporting infrastructure. This is a way to come to consensus on the various approaches to addressing local government infrastructure needs. There are enormous infrastructure needs in communities, and there are areas where ratepayers already have \$200 per month utility bills. It is also important to realize that these communities cannot support any debt repayment. In these instances, grants would be more helpful. This is an opportunity to maintain a permanent source of funding for local government infrastructure rather than providing a one-time injection to the operating budget. Local governments will continue to make the case regarding how valuable the PWAA program is to communities. Additionally, local governments feel like some version of pooled debt access could be a valuable tool. There are communities that can more easily access financing on their own. This proposal includes a new requirement of value planning for accessing PWAA funding. Under this approach, very early in a project, an entity would take a broader look and consider all the ways that it may meet or eliminate the need for a project. Additionally, the system improvement process can provide information to better inform policies regarding infrastructure and break down silos. The focus on a system improvement process would rely on lean practices, remove waste from the system, and look at natural solutions for infrastructure needs. The process would pull together experts and have legislators participate.

(Opposed) None.

(Other) Utilities do not have additional taxing authority. The revenue received from ratepayers has to fully cover the cost of the systems. Because of this, the PWAA loans have been a valuable tool. The PWAA should be retained. It is a revolving loan program, and it is sustainable. If there is an interest in allowing grants, this should be limited to no more than 10 to 15 percent of the appropriations. The main priority should be to maintain the PWAA as a loan program. There is some concern about expanding the scope of infrastructure projects through the PWAA. Over time there have been additional requirements imposed on PWAA supported projects such as investment grade efficiency audits and the requirement to seek federal funds first. These programmatic changes increase the cost of public works projects.

**Persons Testifying:** (In support) Representative Peterson, prime sponsor; Bill Clarke, Washington Public Utilities Districts Association; Ted Sturdevant, Center for Sustainable Infrastructure; Scott Richards, The Nature Conservancy; Jim Hemberry, City of Quincy; Carl Schroeder, Association of Washington Cities; and Gary Rowe, Washington State Association of Counties.

(Other) Scott Hazlegrove, Washington Association of Sewer and Water Districts.

**Persons Signed In To Testify But Not Testifying:** None.