

SENATE BILL REPORT

ESSB 5033

As Amended by House, April 12, 2017

Title: An act relating to financing essential public infrastructure.

Brief Description: Concerning financing essential public infrastructure.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Honeyford, Frockt, Warnick, Conway and Palumbo).

Brief History:

Committee Activity: Ways & Means: 2/09/17, 2/23/17 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/23/17, 26-23.

Passed House: 4/12/17, 96-1; 4/12/17, 95-2.

Brief Summary of Engrossed First Substitute Bill

- Permanently dedicates portions of the Public Utilities Tax, Solid Waste Tax and Real Estate Excise Tax to the Education Legacy Trust Account.
- Permits the state to issue bonds for local infrastructure projects pooled by the Public Works Board.
- Permits the state to guarantee local government borrowing for infrastructure projects.
- Authorizes this debt to enjoy the full faith and credit of the state but it is not subject to the state Constitutional debt limit if the Constitutional amendment SJR 8201 is adopted.
- Authorizes the WA State Housing Finance Commission to offer an infrastructure borrowing program, if SJR 8201 is not adopted.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5033 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget; Bailey, Becker, Fain, Keiser, Miloscia, Schoesler, Warnick and Zeiger.

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 Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Carlyle, Conway, Darneille, Hasegawa and Pedersen.

Minority Report: That it be referred without recommendation.

Signed by Senators Frockt, Assistant Ranking Minority Member, Capital Budget; Billig, Padden and Rivers.

Staff: Richard Ramsey (786-7412)

Background: Debt Limit. The state Constitution limits state debt through a formula that prohibits the State Treasurer from issuing any general obligation (G.O.) bonds if the resulting debt service payments for those bonds would cause total debt service payments for G.O. bonds to exceed a certain percentage of average general state revenue in the prior six years. That percentage is currently 8.25 percent; it will become 8.0 percent on July 1, 2034.

G.O. bonds are issued with a promise to bondholders that the full faith and credit of the state will be used to pay what is owed to the bondholders. There are a number of exceptions to the debt limit on bonds backed by the full faith and credit of the state, including state G.O. bonds for transportation projects that are first reimbursed by the gas tax, and bonds issued by local school districts for school construction projects.

State Finance Committee (Committee). The Committee authorizes the issuance of all bonds and other state debt 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.

State Support for Local Government Infrastructure. The state support local government infrastructure through a variety of programs using state and federal funds. The three largest programs historically have been as follows:

- the Public Works Board (Board) subsidized loan program, funded with state taxes;
- the Clean Water State Revolving Fund, funded with 75 percent federal money and 25 percent state funds; and
- the Safe Drinking Water State Revolving Fund, funded with 75 percent federal money and 25 percent state funds.

The two federally funded programs must operate within federal law and regulations. The programs provide low-interest loans and some grants for projects that improve water quality and provide safe drinking water.

The Legislature established the Public Works Assistance Account (PWAA) and the Board in 1985 to provide low-interest loans for public works projects, which include sewer, drinking water, stormwater, road and bridge improvements, and solid waste facility projects. Approximately three-quarters of the loans have funded water and sewer projects.

The interest subsidy provided through these programs produces a greater benefit for smaller jurisdictions with poor access to the competitive, investment-rated, municipal bond market.

Summary of Engrossed First Substitute Bill: Effective July 1, 2017, portions of the Public Utilities Tax, Solid Waste Tax and Real Estate Excise Tax are dedicated to the Education Legacy Trust Account (ELTA). Under current law, portions of these taxes are deposited in the ELTA through fiscal year 2019; beginning in fiscal year 2020, these taxes will be deposited in the PWAA.

Public Works Board/State Treasurer Infrastructure Borrowing Program. Local governments may seek two kinds of state help in financing their public works projects:

- a certificate that provides a state full faith and credit guarantee to pay bondholders for debt issued for the project; and
- along with such a certificate, the State Treasurer may aggregate and issue bonds for the benefit of such projects.

In addition to the projects funded from the PWAA, under the borrowing authority eligible projects include recreation, flood control and floodplain management, water basin management, culvert replacement, city and county criminal justice facilities, and public libraries.

Local government applicants must first apply for this assistance to the Board. The Board must adopt criteria to determine which jurisdictions are eligible and what projects are necessary. The Board must work with the State Treasurer's Office to determine timing and amount of total financial assistance that can be provided annually. The Board must prioritize and approve projects within the estimated annual amount of assistance in order to assist jurisdictions that can most benefit from the assistance for projects that achieve the greatest community benefit.

The Board and the State Treasurer are authorized recourse against a local government borrower if the borrower defaults on its public works financing loan payments.

The State Treasurer's Office, under policies adopted by the State Finance Committee, must review projects approved by the Board to determine eligibility and credit worthiness of the jurisdiction and the project.

The State Treasurer is authorized to enforce collection of the debt from the local government through several avenues. The State Treasurer will determine local governments' ability to meet financing costs.

Money in the PWAA may be used for the administration of the program and to defer fees the State Treasurer is authorized to charge jurisdictions in the case of financial hardship.

The Public Works Board/State Treasurer program requires and becomes effective upon adoption of the Constitutional amendment SJR 8201. If SJR 8201 is not adopted, the WA State Housing Finance Commission (WSHFC) is authorized to offer a local infrastructure financing program.

Housing Finance Commission – Local Infrastructure Financing Program. The Commission is authorized to develop and implement a new program to provide financing to local governments for infrastructure projects. Infrastructure projects may include the planning,

acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, water systems, storm and sanitary systems, solid waste and recycling facilities, and other municipal projects, facilities, and utilities. Local governments include cities, towns, counties, special purpose districts, port districts, school districts, and any other municipal corporation or quasi-municipal corporation.

In establishing this program, the Commission must develop eligibility criteria that will enable the Commission to choose applicants who are likely to repay the loans. Under this program, the Commission has the authority to: issue revenue bonds; make or purchase loans to local governments for financing all, or part, of the costs of infrastructure projects; enter into financing agreements regarding the repayment of the loans; exempt interest on its bonds from federal income tax on bonds that are tax-exempt; and participate in government programs for the purpose of securing financing for infrastructure projects.

Proceeds and Revenues from Bonds. The proceeds from the sale of bonds by the Commission must be deposited in a segregated special fund established for the purpose the bond was issued. Any revenues that the Commission receives, including contributions, grants, or payment on the principal or interest on bonds, must be deposited in a segregated special trust fund. Bond proceeds and revenues from bonds are not considered state funds.

Financing Agreements. Any local government may enter into a financing agreement with the Commission setting out the terms and conditions of a loan from the Commission. The agreement may state that the local government will repay the loan solely from revenues set aside into a special fund for repayment. In addition, for local governments authorized to levy taxes and borrow money payable from taxes, the agreement may state that repayment of the loan is a general obligation of the local government, or both a general obligation and an obligation payable from revenues set aside into a special fund.

The Commission has rights of recovery for any breach of the agreement or default in payment. Indebtedness Limit. Bonds issued by the Commission under this program are excluded from the Commission's statutory indebtedness limit of \$6 billion.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect only after voters ratify the proposed constitutional amendment in SJR 8201.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We have been lukewarm in the past but recognize this is part of the solution. It makes a lot of sense to move a portion of the state's commitment to financing local government infrastructure. There is risk that the Constitutional Amendment will not pass and we are okay with the WA State Housing Finance Corporation (WSHFC) program. We support both approaches—WA State Treasurer and the

WSHFC—to pooled bonding authority. We recognize the Treasurer may offer a better interest rate.

Persons Testifying: PRO: Carl Schroeder, Association of Washington Cities; Charlie Brown, Cascade Natural Gas; Axel Swanson, Washington State Association of Counties; Bill Clarke, WA PUD Assn.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- 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.
- 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 2021.