SUMMARY OF REFERENDUM 52

Concerning authorizing and funding bonds for energy efficiency projects in schools.

This summary has been prepared in response to specific questions about the provisions and effects of Referendum 52 and is provided for legislative purposes only; it is ***not*** *provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to the 2010 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Engrossed House Bill (EHB) 2561 authorizes the State Finance Committee to issue $505 million in general obligation bonds, to be known as Jobs Act Bonds, for the purpose of creating jobs by constructing capital improvements that lead to energy-related cost savings in public schools and state colleges and universities. It also appropriates funds for grants to public school districts and public higher education institutions. Further, the bill extends the bottled water tax currently due to expire in 2013.

BACKGROUND

General Obligation Bonds

Washington issues general obligation bonds to finance projects authorized in the capital and transportation budgets. General obligation bonds pledge the full faith and credit and taxing power of the state toward payment of debt service. Bond authorization legislation generally specifies the account or accounts into which bond sale proceeds are deposited, as well as the source of debt service payments. When debt service payments are due, the State Treasurer withdraws the amounts necessary to make the payments from the State General Fund and deposits them into bond retirement funds.

The State Finance Committee, composed of the Governor, the Lieutenant Governor, and the State Treasurer, is responsible for the issuance of all state bonds.

The amount of state general obligation debt that may be incurred is limited by constitutional and statutory restrictions; however, Article VIII, section 3 of the Washington Constitution allows for voter-approved bonds outside the constitutional debt limit.

The Energy Savings Performance Contracting Program

The Energy Savings Performance Contracting (ESPC) program began in 1986. The Department of General Administration (GA) manages the state ESPC program. Through the ESPC program, facility owners contract for energy improvement construction projects resulting in energy-related savings that cover the cost of the improvements. The amount of the energy-related savings is at least the cost of the construction project minus incentives from utilities. An Energy Savings Contractor (ESCO) guarantees the savings will cover the cost of the project over a period of generally seven to ten years. The guarantee is in place for the first year of the project and up to ten years thereafter if the owner complies with ESCO monitoring and verification requirements. Public facility owners may also contract for ESPC services through a request for qualifications (RFQ) process of their own, instead of using GA's services.

Each biennium, the GA pre-qualifies ESCOs through a request for qualifications process. There are ten ESCOs on the GA's list of approved contractors. The ESCOs audit ESPC projects and contract for the construction.

Certificates of participation provide financing of real property and personal property, which is real estate and equipment by state agencies. Certificates of participation are financing contracts that include installment payment agreements, lease and purchase agreements, or other interest-bearing contract used to finance property. Real estate must be specifically approved by the Legislature.

Engrossed House Bill 2561

Pursuant to EHB 2561, passed by the 2010 Legislature, the State Finance Committee is authorized to issue general obligation bonds in the amount of $505 million to create jobs by constructing capital improvements to public K-12 school districts and higher education facilities for energy costs savings. The bonds are to be known as the Jobs Act Bonds. The full faith and credit of the state is pledged to pay the principal and interest on the bonds.

The Department of Commerce, in consultation with GA and Washington State University's (WSU) Energy Program, must administer the Jobs Act.

An appropriation in the amount of $500 million is made to the Department of Commerce from the Washington Works Account, which is created in EHB 2561 to receive proceeds from the bond issuance. The appropriation is to be used for grants to public K-12 schools and public higher education institutions for energy cost savings improvements and related projects that result in energy and utility and operational cost savings. Related projects are projects that must be completed in order for the energy efficiency improvement to be effective.

The Department of Commerce must consult with GA and the WSU Energy Program to establish a competitive process and evaluate applications. The Department of Commerce determines the final grant awards. At least 5 percent of each grant round must be awarded to small school districts. Small school districts, for this purpose, are those with fewer than 1,000 full-time equivalent students.

Within each round, projects must be weighted and prioritized based on the following criteria and in the following order:

1. Leverage ratio: the higher the leverage ratio of non-state funding sources to state Jobs Act grant, the higher the project ranking;
2. Energy savings: the higher the energy savings, the higher the project ranking; and
3. Expediency of expenditure: the more ready a project is to proceed, the higher the project ranking.

Projects not using ESPC must: verify energy-related cost savings for ten years, or until the project has paid for itself, whichever is shorter; follow the GA's ESPC program guidelines; and employ a licensed engineer for the energy audit and construction. The Department of Commerce may require third-party verification of energy-related savings if a project is not using an ESCO selected through the GA's RFQ process. Third-party verification must be conducted by an ESCO from GA's list of contractors selected through the RFQ, or by a project or educational service district resource conservation manager.

The Department of Commerce may only award funds to the top ranked 85 percent of projects applying in a round until the Department of Commerce determines a final round is appropriate. Projects that do not receive a grant award in one round may reapply.

The Department of Commerce must use bond proceeds to pay for one-half of the cost of preliminary audits if the project does not meet the owner's predetermined cost-effectiveness criteria.

The Department of Commerce and GA must report to the Legislature and the Office of Financial Management on the timing and use of the grant funds and program administration functions and fees by the end of each fiscal year until the funds are fully expended and all savings verification requirements are complete.

The State Treasurer must determine a mechanism to allow Washington residents to purchase the Jobs Act Bonds.

The temporary sales tax on bottled water, imposed by 2ESSB 2561 (Chapter 23, 2010 Session Laws 1st Special Session) is made permanent.

EHB 2561 requires that the title, intent, and bond authorization portions of the bill be referred to a vote of the people at the next general election. (This vote of the people is now known as Referendum 52). If the "vote of the people" (Referendum 52) is not approved by the voters, the bond authority, the appropriation from the Washington Works Account, the Jobs Act and the continuation of the tax on bottled water are null and void.

SUMMARY OF REFERENDUM 52

If Referendum 52 is passed, the provisions of EHB 2561, passed by the Legislature in 2010, become effective 30 days after the election.

Fiscal Impact
As required under RCW 29A.72.025, the Office of Financial Management (OFM) has provided an estimate for the cost of Referendum 52 which can be found at the following website: http://www.ofm.wa.gov/initiatives/2010/52.pdf.

For further information please contact:
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Senate Ways & Means Committee

This summary should not be considered legislative history for purposes of interpreting Referendum 52.