



Meeting Location: **Dept. of Commerce, Columbia River Room, Bldg 5, 1st Floor, 1011 Plum ST SE, Olympia, WA 98504**

Agenda Item	Action	Page	Time
A) <u>ADMINISTRATION</u>			
1. Call to Order: <i>Stan Finkelstein</i>			9:00
2. Welcome and Introductions			9:02
3. Approve Agenda: <i>Cecilia Gardener</i>	Action	1	9:05
4. Meeting Minutes for May 6, 2016: <i>Barbara Smith</i>	Action	5	9:10
5. Executive Director Update: <i>Cecilia Gardener</i>		19	9:15
6. Department of Commerce Update: <i>Mark Barkley</i>	Verbal		9:25
B) <u>POLICY & PROGRAM DEVELOPMENT</u>			
1. Regional Event Recap & Planning: <i>Jacquie Andresen & Carrie Calleja</i>	Action	23	9:35
2. Securing a Lobbyist: <i>Cecilia Gardener</i>	Informational	25	9:45
3. Securing a contractor for managerial trainer: <i>Cecilia Gardener</i>	Informational	31	9:55
4. PWB Retreat – September: <i>Cecilia Gardener</i>	Action	33	10:05
BREAK			
			10:15
C) <u>BUDGET DEVELOPMENT</u>			
1. PWB Budget Development: <i>Cecilia Gardener</i>	Action	Handout	10:30
2. PWB Construction Loan List Development: <i>Cecilia Gardener</i>	Action	39	11:00
D) <u>INFORMATION & OTHER ITEMS</u>			
1. Fish & Wildlife AGO Opinion	Informational	49	11:30
2. Board Committee Updates	Verbal		11:40
3. Board Member Updates	Verbal		11:50

Note: Anticipated time of Adjournment is 12:00 pm

NEXT BUSINESS MEETING SCHEDULED: July 8, 2016, at the Department of Commerce, Olympia, WA.

Department of Commerce, 1011 Plum Street SE, Olympia, WA 98504-2525.
Contact the Public Works Board at (360) 725-2744 for further information.

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PLEASE NOTE:

This meeting is accessible via conference call. The Call-in information is:

Call-in toll-free number (US/Canada): 1-877-668-4490

Attendee access code: 250 245 14 #

TAB A

Administration



PUBLIC WORKS BOARD BUSINESS MEETING MINUTES

May 6, 2016

Department of Commerce, 1011 Plum Street SE, Olympia, WA 98504

Board Members		Guests Present:	Staff Present:
Present:	Absent:		
Stan Finkelstein, Chair	Mary Margaret Haugen	Blair Burroughs, Washington Association of Sewer & Water Districts	Cecilia Gardener, Executive Director
JC Baldwin	Diane Pottinger	Janet Cherry, Department of Health	Jacquie Andresen
Lisa Ayers (<i>via phone</i>)		Mike Copeland, Department of Health	Mark Barkley
Pam Carter		Mary Howell, Evergreen Rural Water of Washington (ERWOW)	Carrie Calleja
Jerry Cummins		Tracey Hunter, Evergreen Rural Water of Washington (ERWOW)	Ann Campbell
Scott Hutsell		Senator Karen Kaiser (<i>via phone</i>)	Cindy Chavez
KC Kuykendall (<i>via phone</i>)		Steve Lindstrom, Sno-King Water Sewer Districts Coalition	Isaac Huang
Steve Misiurak		Jeff Nejedly, Department of Ecology	Bruce Lund
Matt Rasmussen			Jill Nordstrom
Bubba Scott			Rodney Orr
Lisa Wellman			Cathi Read
			Connie Robins
			Barbara Smith

A. ADMINISTRATION

- 1) Call to order: Stan Finkelstein called the meeting to order at 9:00 am.
- 2) Welcome and Introductions.
- 3) **ACTION: Jerry Cummins moved to approve the agenda as presented. Scott Hutsell seconded the motion. MOTION APPROVED 10-0** (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).
- 4) **ACTION: Pam Carter moved to approve the March 18, 2016, meeting minutes as presented. Matt Rasmussen seconded the motion. MOTION APPROVED 10-0** (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).
- 5) **ACTION: Jerry Cummins moved to approve the April 1, 2016, meeting minutes as presented. Pam Carter seconded the motion. MOTION APPROVED 10-0** (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).
- 6) Executive Director Update: Cecilia Gardener briefed the Board on recent activities. I want to thank our stakeholders and acknowledge the heavy lift they made that resulted in the Governor's Veto of Section 935. They all wrote asking for the veto, and they all wrote to thank him for it. It is greatly appreciated. We will talk later in the agenda about where we go from here. I have heard rave reviews about the event in Colville earlier this week. Jacquie Andresen and Carrie Calleja will give the Board a briefing on that event.

Carrie Calleja said that the regional training event in Colville was very well attended; over 30



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different jurisdictions were represented. The comments we received were that the participants liked the flow of the day's seminars, and were very appreciative that we came to them. The facility was well liked, and large enough for the event. The caterer went above and beyond expectations. It was just an awesome event. On the second day we had three technical assistance teams, and everyone who attended that day's sessions participated. Mark Barkley asked which agencies participated. Calleja responded that it was a joint venture between the Public Works Board, the Infrastructure Assistance Coordinating Council (IACC), the Small Communities Initiative, the Association of Washington Cities, the Department of Health, the Department of Ecology, USDA Rural Development, the Rural Community Assistance Corporation, and Evergreen Rural Water of Washington. Cecilia Gardener stated that this was under the IACC banner, which is exactly what IACC does: provide direct service to communities trying to get stuff done. As you know, we have limited field staff, so we thought this was the best use of staff. I am very proud of Jacquie and Carrie; they did an excellent job. Scott Hutsell said he thought it was outstanding, and is looking forward to Ritzville. Calleja said they had nine operators who received continuing education credit for attending the training event. In total forty people from eighteen jurisdictions participated.

Cecilia Gardener identified the Alternative Financing white paper handout that each Board Member's has been given. This came out of our May 3rd meeting. We were recommended to present a package to the legislature, not just a message: "save the PWAA." Senator Karen Kaiser [on the phone] stated that it's terrific you've engaged in this approach. We're going to have to come up with some out of the box alternative financing. I'm completely open to ideas. I will say the Governor's veto was terrific, and I thanked him for it, but that money is totally at risk in the next session. The demands of McLeary will unfortunately trump everything else. So coming up with an agreed upon package of proposals for rebuilding the PWAA would be much appreciated. I'm working closely with Senator Warnick on this; it's a bipartisan approach. We're really trying to get this fixed. Gardener responded that this group will meet again, after we've had a chance to digest this proposal. As the idea evolves, it will filter out to the stakeholders, partners, legislators, etc. The more buy-in we get, the better. Senator Kaiser asked to be kept in the loop, along with Senator Warnick. Scott Hutsell responded that he went to OFM after our May 3rd meeting, and he ran into Nona Snell; he asked how she thought the meeting went. Snell said it vastly exceeded her expectations. She's excited about it. Cecilia Gardener shared that the task force concept was vetoed, but Nona still plans to assemble a group to address these concepts. She has some concepts that are being vetted at OFM. So I think our efforts will dovetail with OFM's efforts. I know that AWC is making efforts and reaching out to cities to identify their needs. They want the Public Works Assistance Account to be solid, but also acknowledge the legislature has a huge challenge with meeting school funding. Hopefully this will feed into a comprehensive state strategy. As information is disseminated, please provide input to refine the concepts. As you know, we have to submit our materials into the Governor by September.

Stan Finkelstein replied that he thought the meeting went well. We were blessed by the intellectual acumen of the people invited to attend. One area we didn't probe is when you look at local infrastructure needs, we have always thought of a state program similar to the PWAA. One area we might want to examine is what options are available for local capacity building? Options that provide locals with greater flexibility and options to meet their needs? When added to the toolbox of other



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options, it may collectively assist in increasing jurisdictional capacity. Options such as increased sales tax authority, tax credits, etc.

- 7) Department of Commerce Update: Mark Barkley provided an update on Department of Commerce activities. Stan Finkelstein, Janet Cherry, Bruce Lund, and I attended the two day Public Private Partnership (P3s) meeting in Seattle. There are possibilities of additional tools in the tool belt to help there. There are a lot of different approaches that we'll be working on this summer. Stan Finkelstein asked if there are options that rely on P3s whereby the private sector becomes the provider of infrastructure, while that infrastructure remains publicly owned. Does it make sense that there are eight water purveyors on Bainbridge Island? Consolidation makes sense. Expanding the small works roster, so you don't have to go through the convoluted bid process for every project, makes sense. It's another tool to add to the infrastructure management basket.

Stan Finkelstein stated that normally we deal with a very tight timeline prior to a biennial budget being put together. I believe we have a little more flexibility than the September deadline this time. Cecilia Gardener replied that the budget deadline is September. The policy deadline is a little more flexible.

B. CONTRACTING

- 1) PWAA Quarterly Contract Report: Jacquie Andresen presented the Quarterly Report for the Public Works Assistance Account, and provided an update on Program Specialist activities. There are no new contracts. We have 60 existing contracts. Nine closed last quarter. The \$8 million in loan draws is flat from last quarter. At the last Board meeting you asked how many dollars were left. We have \$72,945,618 remaining to be drawn. Cecilia Gardener stated that we've gotten some big de-obligations, so we may cross the biennial line with a positive account balance of between \$8 and \$10 million.
- 2) DWSRF Quarterly Contract Report: Jill Nordstrom presented the Quarterly Contract Report for the Drinking Water State Revolving Fund. We also added that new item at the bottom, "Dollars remaining for clients to draw." There were no new contracts since January. We currently have 117 contracts open. We have six contracts that closed last quarter. \$11,601,635 was drawn. \$211,026,694 is remaining to be disbursed.
- 3) DWSRF Loan Retainage – Port Townsend: Jill Nordstrom presented a recommendation by staff to revise the Loan Retainage Timing for the City of Port Townsend DWSRF Loans #DM12-952-092, DM15-952-034, and DM15-952-036. These contracts all represent one project, which is 30% complete. The City has been reimbursed approximately \$4.3 million to date for this project. These contracts are scheduled to close simultaneously. The anticipated project completion date is October 31, 2016. Staff recommends revising the Loan Retainage requirement on two of these loans, DM12-952-092 and DM15-952-034, to allow the City to spend down these loans in their entirety prior to project completion. The required \$996,752 retainage would instead be held on the DM15-952-036 contract.

Cecilia Gardener asked if we will be able to close the existing contracts? Jill Nordstrom replied that we may not be able to close them entirely. We may be able to accelerate the closure of certain



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aspects of the projects.

Jerry Cummins responded that the project as a whole is 30% completed, but they plan to be done by October? Is that reasonable? Janet Cherry stated she was there in December 2015, and they were pretty much done with the treatment plant, and they had just started on the storage tank. Based on what I saw, October seems do-able.

ACTION: Bubba Scott moved to revise the Loan Retainage for the City of Port Townsend contracts per staff recommendation. Pam Carter seconded the motion. MOTION APPROVED 10-0 (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).

- 4) DWSRF Third Loan List: Janet Cherry and Mike Copeland from the Department of Health, Office of Drinking Water, presented the fourth Drinking Water State Revolving Fund loan list to the Board. Cherry stated that she wants to publicly acknowledge Jacquie Andresen and Carrie Calleja for their great job at Colville. She is so looking forward to Ritzville. Cherry pointed out that on Page 35 of the Agenda Packet, there is a page that is not specific to the projects on the loan list. This was asked for at your last Board meeting, and provides further information about our funding. So you can see that that the funding has declined over time.

Stan Finkelstein asked about the Governor's announcement concerning lead in school district water. Has the Department of Health been directed to discover how much lead is in Washington State's water systems? Janet Cherry replied that our community and non-transient community systems, which includes schools, are required to do lead sampling in the distribution. I don't know all the details, but I'll be happy to come back with that info. I have seen legislation proposed in congress to provide funds for that monitoring.

Jerry Cummins responded that if you take my jurisdiction and monitor when it leaves the storage facility, it's going to read differently than when you measure it at the tap. It all depends on where that monitoring is done. We monitor at point of distribution. Janet Cherry replied that the lead monitoring is required to be drawn at the tap. It's the hardest sampling to do. Some of our schools are old, with old drinking water fountains, which are the highest source of lead. This is where our high lead hits occur. Some schools sampled in the summer, when water use was low, so the water sat in the pipes for a long time. Cummins asked, what do you call that first thing in the morning reading? Cherry replied, lead and copper. You're supposed to take them after 6 hours of use. Lisa Wellman asked, how do you know they are taken, and who do they report the test to? Cherry replied, some samples are required to be done by an operator, some not. Then there's chain of custody, submittal to a certified lab for testing, and then we get the results. Wellman replied, so essentially you are certifying that tests are run, and results are okay? Cherry replied, yes. We select sample sites based on the age of structures in the community. For example, schools on the Olympia water system are not required to do a separate sampling other than the city of Olympia, because they are all on Olympia water. Wellman asked, are you making recommendations to the Governor? Cherry replied, yes. Mike Means has spent a lot of time working on this. Wellman, can you project any financial impact to do what you're asking? Cherry replied I don't know if anyone has assessed a dollar amount for schools to swap out these old drinking water fountains, continue to test, etc. Stan Finkelstein responded, as I recall your program has some money available for grants as well as loans? Cherry replied, yes. Finkelstein asked, say we have a \$125 million problem in schools, could your money be used for that purpose? Cherry replied, yes, we are working to get that



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ability. We have just been given the ability to change out pipes on private property. Cecilia Gardener asked, do you have a recapture clause so the citizens repay? Cherry replied we are still working on sorting that out.

Janet Cherry turned to the Loan list. There is a new item on the list you haven't seen before: Chehalis. We reached out to capture any additional projects. We're recommending \$300,000 to them. We're also able to lower interest rates for several projects, as well as several systems that have now qualified for a subsidy. Mike Copeland responded that we have several ways we can determine who is qualified for a subsidy. For the last few years, we've gotten audit exceptions because we haven't reached 20% subsidy. So we came up with a new metric, based on their debt service coverage ratio. So using that, we identified six that will now get that subsidy. The affordability ratio measures the user's ability to pay, and the debt service coverage ratio measures the system's ability to repay. Stan Finkelstein asked, do you have a debt service coverage ratio for all of your loans? Copeland replied that we don't, but I prefer to use 1.2%, based on my previous banking experience.

The Board was asked if they have any recusals. There were none.

ACTION: Pam Carter moved to approve the DWSRF fourth loan list as presented. Lisa Wellman seconded the motion. MOTION APPROVED 10-0 (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).

C. POLICY & PROGRAM DEVELOPMENT

- 1) DWSRF Transition: Cecilia Gardener updated the Board on the transition of the DWSRF program from the Department of Commerce (Commerce) to the Department of Health (Health). The bill that transfers the program to DOH passed this session. We are now working on moving the program over. There are three agencies involved: Commerce, the Public Works Board (PWB), and Health. Each has a role. This will be complex and time consuming. Health has not officially weighed in on this product. If the Board approves this concept, then I will approach Health to see if they approve. There are all sorts of issues to address. The Board has a significant role in this, both legally and ethically. Commerce also has a stake in this going efficiently and swiftly. We think there should be a formal group to orchestrate and monitor the transition. The thought is if we can control the big ticket items, the lower level items will move a little smoother. I am asking for the Board to review the concept, and if you're agreeable, I will approach Health. Stan Finkelstein asked, what is the timeframe for this? Gardener replied this year's applications will be administered entirely by Health. The Board will no longer be the authorizing body on contracts. At the end of fiscal year 2018, all legal authority returns to Health. At that point, only Health can issue money and pay A-19s. We will slowly transition the existing contracts to Health as they are able to absorb them. They are not fully staffed yet. Their interim manager – Mike Means – is the new Clark. And they still have to fill that position with a permanent employee. They also have an IT barrier they are working to resolve. The next set of applications will not be approved by the board. Janet Cherry replied yes, but we'll still send a list for informational purposes. You may still deal with contractual amendments. Scott Hutsell asked how long until we won't be dealing with amendments? Gardener replied two years at the most. We'll have to amend every contract to make them Health contracts and not PWB contracts. So a maximum of two years.



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Mark Barkley stated that one of the largest components for Commerce is the outreach to our clients. Ensuring we have clear communications on this process; I will be working with our staff and Health to make sure systems are put in place to clearly manage the transition process. I want to make sure the Board has their hands in that piece, as well. Stan Finkelstein asked, what are the implications to staff? Bruce Lund replied that five FTEs are impacted. That includes our line staff and some of our indirect services staff upstairs. Finkelstein asked if any of those people will transition to Health. Janet Cherry replied that we need to hire one to two Commerce Specialist 3s, and then we'll be fully staffed. For the MOU process we can make that look however we need to, in order to keep the customer in mind. Finkelstein asked how Cathi Read is funded? Read responded that her Health money is from a different set of funds, not DWSRF. Jill Nordstrom replied that we are working actively with staff so that they know what's happening. We are working with them to improve their interviewing skills, etc. to help them go forward. Finkelstein asked, how many staff are we talking about? Nordstrom replied two DWSRF staff, two staff from Direct Appropriations, and one in Brownfields. We will lose four of eight within that group. Mark Barkley responded that I think it would be very appropriate for this staff and the committee to compile a report that would be issued to the Board and touch on many of those categories, to include staffing. Finkelstein asked if you need Board action to approve the recommendation? Gardener responded that you were all hand-picked because you are all end users and have familiarity with this. You can say no if you wish, and someone else is welcome to volunteer. The membership piece is open. Staff were thinking along these lines, but no, members weren't approached before I drew this up. Barkley responded that if we need specialty staff from upstairs, we can bring them in on an as-needed basis.

ACTION: Pam Carter moved to authorize Cecilia Gardener to talk to the Department of Health to create a workgroup to oversee the transition of the DWSRF program from the Public Works Board to the Department of Health. Scott Hutsell seconded the motion. MOTION APPROVED 10-0 (Ayers, Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).

- 2) Governor's Veto and Next Steps: Cecilia Gardener updated the Board on the governor's veto of section 935 of HB 2376, and the next steps. I want to give a special thank you to Brian Bonlender; without him this veto would not have gone through. The Governor vetoed the policy part of the legislation to continue not issuing new loans out of the public works assistance account. This means we have a small window to try to develop a proposal that we'll present to the legislature. Our dollars are not going to save McLeary, but it's another pebble in the pond to get there. They are looking at every single pot of money. They're even looking at CERB. The impacts are being felt all over. The Housing Trust Fund was partially redirected this year for the first time ever. These used to be considered inviolate. But I don't think anything is anymore. We need to develop the strongest strategic plan possible for legislative consideration.

Cecilia Gardener responded the first step is this group on financing. There is also Rhys Roth's group, the Center for Sustainable Infrastructure, out at Evergreen. There are multiple efforts going forward by different groups. As we come together, we can funnel these into the concept that the Office of Financial Management (OFM) has. I know nothing about it, but Nona Snell made a comment about the 2006 JLARC report, and then the Burke Report. Somewhere between those two, we have reported on this to death. There have been eight reports and no action. Nona has stated that the Governor is committed to work on this issue. The problem is that we have to move on a parallel



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path to Nona, and share that info with OFM to see if we're heading in the right direction. I think that's the best we can do until OFM is ready to present their proposals. Regardless of what is recommended, we need to look at funding mechanisms that do not include the Public Works Assistance Account.

- 3) Development of Loan List: Cecilia Gardener and Ann Campbell updated the Board on the loan list development proposal. Lisa Wellman stated that it's a complete waste of time to develop a loan list that will not be funded. Gardener responded that the OFM lawyers have told us we are required to produce a list.

Stan Finkelstein responded that I understand there are seven senators not seeking reelection. Cecilia Gardner replied that the House is vulnerable to changing majority parties. Policy-wise they believe in us, but budget-wise they have no idea how they'll get there. Some of this is of their own making; they postponed decisions for decades.

Cecilia Gardener responded I want to talk to you about what we've done. We reached out to Steve Gorcester at the Transportation Improvement Board (TIB). He gave us some good feedback. The proposal is before you on Page 61.

Ann Campbell responded we're all aware of the fact that the PWAA not been available for funding over the last couple of biennia and the unsuccessful round of loan lists we put in last year has left our clients with a distinct lack of faith in the process. The traditional application process is what's known as a push process. Push out the application and hope it comes to fruition. That's what the Board has done for the life of the fund. I did some research, and found out that the Board has the authority in statute to determine the allocation process. You can create a selection process. It needs to be transparent and defensible while serving the Board's goals. With that in mind, we've presented a pull model. It involves very little effort on behalf of clients, other than to agree to assume debt if they were selected to be funded. The projects already have their funding. What the PWAA funding would do is take those projects to the next level. For example, they're putting in a road using funding from the Department of Transportation or TIB, and with additional funding from the PWAA, they could install more expansive lighting, or light up crosswalks, or maybe high energy efficiency lighting, or wider sidewalks, or use more expensive materials like permeable concrete. They would be phased projects, so we could come in and fund phase two. Or maybe come in and use these funds for preconstruction activities.

Lisa Wellman responded, given these projects, would you recommend focusing on distressed communities? Ann Campbell replied, I would recommend the Board focus on distressed communities, those with high unemployment and economic challenges due to mill closures, etc. That would be part of the criteria that the Board would agree upon. Cecilia Gardener replied, we'd still have to rank and score the applications. We're trying to achieve low burden and low risk to the client. Wellman replied, it would seem to me that on the basis of the yearly loan list situation, we're somewhat crippled due to a timing issue. Gardener replied, yes. Wellman replied, I think it's a very interesting concept.

Stan Finkelstein responded, first of all you're dealing with projects that have already been funded, and you're dealing with "nice to have" augmentations. That's not going to sell very well to the



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legislature. If we pursue this effort and it has a chilling effect on applicants, we're going to be embarrassed to go to the legislature with a tiny list. They're going to say this isn't a needed program. Lisa Wellman responded we have had many different models, and a lot of flexibility. I don't think it's necessarily suggesting that the entire loan list be this. This could be a mix and a portion of the loan list. Cecilia Gardener responded, I'm going to be perfectly blunt. I want to fund meaningful projects within the tight parameters they've given us.

Janet Cherry responded, I don't know what your timing needs are, but by mid-November we'll have our DWSRF list together, with quite a list of unfunded or partially funded projects. Is that too late? Ann Campbell replied, yes. Cecilia Gardener responded, all we could fund are unfunded or ineligible activities. Jeff Nejedly responded, so that contingency proviso still applies? Campbell responded, the language in the proviso specifically says the selection process for the loan list for the next biennium will be "X". Gardener replied, our box is pretty tight. Nejedly replied, we sometimes have projects that have elements that are ineligible. The past couple of years we've funded pretty much everything that was above 600 points. I think we're getting a lot of small hardship communities. And we're getting some of the bigger communities. I think we have a bit of a gap on the medium-sized communities.

Jerry Cummins responded, you used the example of funding the efficiency of lighting. I was appalled after they took our money, that they established a fund to help cities increase the efficiency of their lighting. I think we need to establish the need out there. To help fund already funded projects tells them that there are other ways to fund out there and that there is no need for this fund.

Pam Carter responded, I thought it was an innovative proposal. It may be a good idea, but will the legislature look at it as if they are funding gold plated faucets when steel faucets were good enough? I think we also need to explain why we didn't go with the last list. We need a real succinct explanation. Jerry Cummins replied we need to go to a list of projects that were not able to be funded elsewhere.

Bubba Scott responded, we need to be partnering with utility districts and water and sewer districts to find out what they need. And you need to streamline that application GREATLY. We need to really trim that back. Cecilia Gardener replied, we could come up with an abbreviated application. Ann Campbell replied, we have to have enough information in the application to allow the Board to decide if this is a truly high need, high value application. When we went to an abbreviated application form, we got slammed by the legislature. It is extremely challenging to come up with something that is low risk and low cost for the clients, and yet still gives the Board enough info to make an educated decision. Scott asked, are you still asking for the different categories of impact? Campbell replied, yes. Scott asked, so we use that as a potential ranking process? Gardner replied, yes.

Stan Finkelstein responded, at the Tuesday meeting, I thought it was conveyed that we should be bifurcating money into a loan list and a grant list. If we look at grants, are there other types of projects that don't qualify for grants under the SRFs? Cecilia Gardener responded, we don't do grants, we do loan forgiveness and guarantees. If we were to produce primarily a grant list, that challenges the fund greatly. It has to have a balance of grants and loans. Since the fund has been swept so frequently, it has challenged the base. You could take a portion of that for grants.



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Jeff Nejedly responded there is a pretty significant need for flood control projects. Our capacity there is pretty small. If you're going to target out, we could share our list. There are stormwater facility projects out there that are required to be done. We haven't seen many of those, not sure if they are bonding them or what. I think the low bond rates are why we haven't seen more applications. I think the gap is communities that either have a poor bond rating or can't bond.

Cathi Read responded, is there a way we can have different weights on different objectives? Right now, disaster resiliency is a big thing. What if you got more points for achieving those resiliency outcomes? You could generate a great list that was very compelling to people and maybe because they are also trying to do emergency planning, it would achieve more than one objective at a time.

Steve Lindstrom responded, you mentioned water was precluded. What about sewer? Ann Campbell replied, the statutory requirement for this loan cycle is that if they are eligible for funding through the State Revolving Funds (SRF), then they must go to the SRF, and not to us. This is a temporary statutory requirement. This year, for this loan cycle, these are the rules we have to live by. From what we have heard from the legislature and OFM, they are not thinking about how local governments can maximize local government investment. They are only looking at maximizing state dollars. That's why they want folks to go to the feds for money first. When we're looking at investing or proposing investment of state resources, how can we achieve our goal of helping communities who need the help while still pushing forward on state policy objectives?

- 4) Managerial Training Proposal: Cecilia Gardener recapped the situation. The contract with the technical colleges did not work out, so we've reached out to Evergreen Rural Water of Washington (ERWOW). The managerial training committee said they'd like to see a proposal, so Tracey Hunter, Executive Director of ERWOW and Mary Howell, one of their instructors, are here today to talk to you.

Tracey Hunter responded I am passing out some handouts –study guides and handouts for the class that includes the PowerPoint, for Board members to look over. To give you some background on ERWOW, we are a nonprofit that gives training and technical assistance for water and wastewater operators. Our field staff goes out to systems with less than 10,000 population to do hands-on training onsite. What I am here to talk to you today about is the utility management class that we have. This was put together by National Rural Water. It was the brainchild of Texas, Kentucky, and Florida. We start with national, then Mary Howell and our other instructors dive into Washington state rules and regulations. The purpose was initially designed for operators who wanted to move up into a management position. We look at it as much more for anyone in the industry. Not everyone wants to move up. Most people specialize, they do the operations, they do the books, or they do the management. This gives everyone something. There is a Utility Management Certification that you can get when you take these classes. It's 18 hours of training broken up into three days – Financial, Managerial, and Technical, with one day for each. We break those three days into once a month classes, and that has worked really well for us. We charge \$325 to go to this course. If they are an operator, they also get continuing education credits of 1.8 units.

Mary Howell responded, I've done several of these trainings. It's one of my favorite classes to teach. I get such a wide variety of students. The networking is incredible and to watch the lightbulbs go on



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as the person who is really good at technical suddenly understands the financial, and vice versa, is great. For them to understand that it's not just rules from the state of Washington, but also labor laws, insurance laws, etc. So they walk away with a really broad understanding of what it takes to run a water system. I feel the networking is the most beneficial piece of this. I've been doing trainings for over 30 years, and we always talk about online training, but when we go to online, and we just take out a core piece of what's important in our industry, we lose that networking piece. It's an excellent course. I love teaching it. Under the financial sustainability we go into accounting, rates, reporting and audits, budgeting and planning, getting the bonds and supporting the bonds financially.

Lisa Wellman asked about prerequisites? Tracey Hunter replied, no, anyone can take it. You're in the industry, you can take it. Wellman responded, just the number of hours you're talking about, I would come out with a well-rounded appreciation in general for what it involves, but I don't know that I'd be operational. Mary Howell replied, you're correct. 90% of the people come to us with some knowledge. They might not have knowledge of other sections but they are strong in their section. What they do in those three days is identify their weaknesses, and then they can come back and take additional training. Hunter replied, and we can also send out field staff to give more one-on-one training.

Stan Finkelstein responded, I am wanting to train the office staff and council members in understanding their responsibilities about rate setting and increases, contract adherence, auditing, etc. These people don't have the wherewithal to sit down for three days at time. They may need it broken down into more discrete bites. Possibly even breaking it down to being more understandable for these folks. Mary Howell replied, those are all great concerns. We don't do it three days in a row. We spread them out over six weeks, over two months, 3 months, it all depends. If you take financial and managerial, and something happens – for example one student couldn't take the technical that time due to wife's illness – he was allowed to come back to do the technical another time. We tailor it to the client's needs. What's best for the city clerks is to gain an understanding of everything that needs to be done, so they can respect the guys who are asking for something, not just know only their own purview.

Stan Finkelstein asked, is it done in different geographic locations? Tracey Hunter replied, yes, we hold it all over the state. We have that ability to go anywhere. I think it would be good to get three to five jurisdictions in proximity together, and hold it for them, so that they can network and support each other. We have it set up as three full day sections for CEUs. But if we were to tailor it more to council or clerks, and we're not held to that CEU parameter, we could break it down to two-three hours here and there.

Cecilia Gardener asked if \$325 is the cost, how many students do you teach a year. Tracey Hunter responded we run them once a quarter, three or four times a year. We can accommodate up to 50 students a year. Gardener asked do you have the capacity to take on more. Hunter replied, yes. Stan Finkelstein responded, if we're initiating a new program with a different audience, we may be looking at many more than 50 people a year. Gardener replied, we have \$250,000 to allocate as you see appropriate. Hunter asked, for your money, does it have to be used within a certain time? Gardener replied, yes, it must be spent in full by June 30, 2017.



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Ann Campbell asked do you need to keep the class count down to 15? Tracey Hunter replied, I think 20 would be our max. Mary Howell replied, 20-24 at the most. The first class we taught was at the Evergreen conference, and it was a good way to get it introduced. Cecilia Gardener replied that we'll talk to the IACC folks and see if we could run this as a pre-conference track, so people don't miss the conference.

Bubba Scott responded I understand you're not just talking three classes per year. You may be able to accommodate a couple of hundred people, taking classes on different levels. Tracey Hunter, definitely. We have three instructors right now. Mary Howell, Tom Hoffman and Dan Sander. Mary Howell responded, Tom focuses on the financial. He consults with one of the King county water systems. Dan's background is in implementing the regulations. That's what he did with the Department of Health for 30 years.

Stan Finkelstein asked, you have a predetermined agenda in terms of what you teach on each of the three days. How easily could that be modified if we determine other needs? Tracey Hunter replied, I think we could easily add things, but I don't think you'd want to take away anything we're currently teaching. It's a huge part to get them to understand all of the factors that it takes to bring clean drinking water out of their tap. I'd have a real problem removing any portion of that.

Stan Finkelstein responded with two concerns: The first is enabling those people responsible for the governance of the system to discharge their responsibilities – the Clerk, the Administrator, who is not a professional in the area of utility management. The second is the whole issue of intertemporal management. How do you assure the citizenry that their water system is appropriately managed so that in 20-30 years they are not hit with a bombshell? Managing the finance of a system, maintenance, etc.

Cecilia Gardener responded, I think that Tracey's presentation is a good fit for the original intent of this project. Brian Sims wanted to raise the capacity of local systems. The council piece linked with the rate setting piece is significant. It's a huge hurdle for systems to have to raise rates. I am comfortable with this particular program, and I'd like to work and create some variations, to target some individual groups. I know you already work with the Department of Health. What do you do for them? Tracey Hunter replied, currently we do source water protection for them. We worked on transient non-community systems. We've never worked with Health on this particular program. We have administered many of their training classes for them, but not this. Mary Howell replied that one of the things we really focus on is when you're talking about your rates; you have your daily operation, your emergency pot of money, and capacity building for the future. This is a huge focus for this class. In all of our classes we preach that. Mark Barkley responded, you might understand where there are gaps across the state. I think that's great to have that internal knowledge there.

Cecilia Gardener responded, what I propose is to speak to the Department of Health to do an Interagency Agreement with them, because they have a contract with ERWOW already.

Scott Hutsell asked how many have gone through your program. Tracey Hunter replied, I don't know right now. Hutsell asked, have you touched 10% of the people who could benefit from this? Hunter



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replied, I don't think we have. Hutsell asked, how can we market this strategically to reach those people who haven't taken this? How long has this been around? Hunter replied, we have hit it hard the last three years, but national started this in 2010.

Stan Finkelstein asked, we have a certain amount of money to use to defray the cost of tuition for some folks. How do we deal with the two-tiered system, between the haves and have-nots? Tracey Hunter replied, the way we're doing it now, it's primarily for operators. If we're marketing it to councils, clerks, it's a different class to me. I don't think we'd have any issues. Lisa Wellman responded, we could set a scale for reimbursement, scholarships, etc. Scott Hutsell responded, if someone commits to do it, we have the dollars to do it, let's just give them the dollars to do it. Pam Carter replied if it's located in the rural sections of our state, then we're likely to get less from the urban areas, and more from the small rural areas.

Cecilia Gardener responded the money has to be fully spent by June 30, 2017. Not encumbered, not obligated, actually spent.

Stan Finkelstein asked how much lead time do you need before we can have the first training? Mary Howell replied, we're ready now. Tracey Hunter replied, there are some additions you might want to add, but other than that, we're ready. It depends on what your tweaks entail.

ACTION: Lisa Wellman moved to direct the committee to work with ERWOW to develop a final proposal to be brought to the next Board meeting. JC Baldwin seconded the motion. MOTION APPROVED 9-0 (Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).

D. INFORMATION & OTHER ITEMS

- 1) Small Communities Initiative (SCI) Quarterly Report: Cathi Read updated the Board on SCI. Stan Finkelstein asked, have you seen any new evolving need while you're working with these communities? Read replied, the source of data on household income is a source of frustration. The American Communities Survey is the new vehicle, and there's a huge margin of error. Some communities are reported to have a larger median income than they actual have. CDBG is having a threshold issue. What I think this less accurate data is causing them to fall off the CDBG list, so they are wanting to do income surveys. Those are difficult and expensive. The Departments of Ecology and Health have contracted with the Rural Community Assistance Corporation (RCAC) in the past to do these surveys. That's a big issue. Jeff Nejedly responded we're spending all this money on income surveys instead of rate studies which communities really need. I brought this up at the national level. Who is in charge of this, that the data has become so bad? Finkelstein asked if they are using income taxes? Read replied, no they are calling people, and sending out these American Communities Surveys.
- 2) PWAA Graphics: Cecilia Gardener stated that JC Baldwin asked for some fund information in a visual format. Cindy Chavez and Ann Campbell have produced that. They appear on the last two pages of your packet. These are informational only. Ann Campbell responded, the back page is a cash flow image – how much money is coming in, and how much was redirected. On the snapshot on the page prior is basically a checkbook for the Board. Stan Finkelstein asked, so this biennium we are



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anticipated to end in the black? Campbell replied, yes, if we don't, we'll have to write another letter to OFM asking to cross the line in the red. Cindy Chavez responded, we should end up in the black about \$9 million, not less than a million as is shown here. Campbell responded, it literally changes from day to day. Lisa Wellman responded, above the line should be equal to below the line. Finkelstein replied, yes. Campbell replied, if the Governor had not vetoed the redirection of funds, we would have extrapolated out for another biennia. So, to a certain extent, the future revenue is predictable as far as loan repayments are concerned, and tax income, but how much money the legislature redirects is the variable.

- 3) Board Committee Updates: JC Baldwin reported that the Communications Committee met at 8 am this morning. Jacquie Andresen talked about the latest Board newsletter. We would like Board members to contribute articles and feedback. Jacquie Andresen responded I wanted to speak further about the Tech Team training in Colville. I was so appreciative of the team effort. It gave Carrie Calleja and I a chance to network and build relationships with other funders. Kudos to Cathi Read – her experience was invaluable. We had two huge intentions, one was to get technical assistance out to the communities, and to bring the Public Works Board presence out to the local jurisdictions, and I think we were successful with that. We got a lot of positive feedback already about it. We will utilize the participant survey results to build the Ritzville event.

Pam Carter responded, I would never have guessed it was the first time for Carrie and Jacquie, putting this together. The biggest complaint was spotty Wi-Fi. In hindsight, maybe a short time devoted during that introductory panel to explain what Tech Teams are might be useful. There were definitely people there who would have benefitted from a Tech Team. Scott Hutsell responded, it was very good – a really well done event.

Jacquie Andresen responded the other intent was to provide a “mini IACC”. Giving this out at different times of the year can help people catch those deadlines. We had 40 participants representing 18 communities, with people of all levels, operators, engineers, electeds, and staff. The transition from the funding panel to the project planning, to asset management to rate setting was a great flow.

- 4) Board Member Updates: Scott Hutsell met with the Washington Policy Center. I've been after them to do something about good fiscal policy and pointing out the redirection of funds is not good fiscal policy. I'm still working on that. I'm meeting with them on May 18th in Pasco. Lisa Wellman stated that she's been a member of the Volker Alliance for a while. They are doing a report about good fiscal policy.

ACTION: Jerry Cummins moved to adjourn the meeting. Scott Hutsell seconded the motion. MOTION APPROVED 9-0 (Baldwin, Carter, Cummins, Hutsell, Kuykendall, Misiurak, Rasmussen, Scott, and Wellman).



DATE: June 7, 2016
TO: Public Works Board
FROM: Cecilia Gardener, Executive Director
SUBJECT: Executive Director Update

May 5, 2016 through June 9, 2016

Board

- Chair/Executive Director
- Chair/Executive Director/Mark Barkley
- Communications Committee- May 6
- Alternate Financing Meeting – May 3
- Executive Committee – June 3

Internal Operations

- Results Commerce Quarterly Target Review Meeting
- IACC monthly standing meeting
- DOH Transitional Meeting – draft MOU
- DOH Contract Review
- DOH IGA preparation
- Application development meeting
- Weekly PWAA Predictive Model updates
- Internal PWB Communications
- Internal preparation for Board meeting
- RFP development-Lobbyist
- RFP development – Training

Staff Training

- Innovative Infrastructure Finance - Webinar Series - Performance Based Infrastructure (PBIs)
- DAHP Cultural Resources Summit

Outside Meetings

- Maximizing Resources
- Regional academies/tech teams
- Future of Washington Infrastructure – June
- CERB Board Meeting May 19, 2016
- IACC/PWB Training and Tech Teams – Colville
- IACC/PWB Training and Tech Teams – Ritzville

Commerce Activity

- LGD Strategic Planning Session
- Weekly LGD Management Meeting
- Weekly one-on-one with Mark Barkley
- Bi-Weekly Unit meeting
- LGD Connecting and Change Management
- Weekly Budget Coordinators Meeting
- Results Commerce – QTR
- Discover Commerce Meeting
- Infrastructure in Support of Affordable Housing-Community Service and Housing
- Commerce Supervisor Symposium
- Overview/Review of Tribal Contracts

TAB B

Policy & Program Development



DATE: June 1, 2016

TO: Public Works Board

FROM: Jacquie Andresen, Programs Specialist

SUBJECT: Regional Training / Tech Team Event Summary

This memo provides a snapshot of the training that occurred in Colville and Ritzville in May 2016. This was a coordinated effort between the Public Works Board, the Department of Commerce – Small Communities Initiative Program, the Department of Health, the Department of Ecology, the Association of Washington Cities, the AWC Risk Management Service Agency, the Transportation Improvement Board, USDA Rural Development, the Rural Community Assistance Corporation, Evergreen Rural Water of Washington and the FCS Group.

Public Works Board Members JC Baldwin, Scott Hutsell, Jerry Cummins, Pam Carter and Lisa Ayers participated in the training events.

Number of Event Community Attendees:

	<u>Community Attendees</u>
Colville	35
Ritzville	<u>36</u>
TOTAL	71

Number of Communities Represented:

Colville	19
Ritzville	<u>23</u>
TOTAL	42

Number of Tech Teams Orchestrated:

Colville	3	(Deer Park, Springdale and Rosalia)
Ritzville	<u>3</u>	(George, Colfax and Pullman)
TOTAL	6	

Number of Operators eligible for Professional Credits from attending:

Colville	9
Ritzville	<u>5</u>
TOTAL	14



DATE: June 2, 2016
TO: Public Works Board
FROM: Jacquie Andresen, Programs Specialist
SUBJECT: Regional Training / Tech Team Future Events Planning

With the success of the recent Eastern Washington Regional Training / Tech Team Events, I would like to propose working with our partners to conduct additional workshops in 2016. With this effort, we are able to continue to demonstrate a Public Works Board presence in the communities as well as get the training out to the jurisdictions that need it most. The Workshops would be held in Western Washington and have a similar format.

We have received positive feedback from the attendees and find this effort provides value to our clients. Therefore, staff recommends Board support in the collaboration of facilitating up to two additional workshops in 2016.



DATE: May 31, 2016
TO: Public Works Board
FROM: Cecilia Gardener, Executive Director
SUBJECT: Retaining a lobbyist

BACKGROUND:

The Attorney General's Opinion validated the Public Works Board's (Board) independent entity status. This affirms, amongst other things, the Board's authority to retain a lobbyist.

ADVANTAGES

- Expertise in legislative strategy and technique to facilitate legislative goals.
- Rapid response to issues and assistance for the Board to provide appropriate communication to key legislators and regulators.
- Identification of leverage points and areas of concern based on understanding the state's political climate.
- Monitor and dissemination of the legislative process in an efficient and accurate manner.
- Comprehensive understanding of the legislative process and analysis/drafting of persuasive bill language.
- Future benefits of a good relationship. For instance, a lobbyist who engages the Board in developing good relations with legislators may pay off well into the future as these relations continue to develop.

Lobbyists are not Public Works Board members, nor are they Board staff. They may not immediately understand or appreciate the problems faced by the Board. Hiring a lobbyist does not mean the Board and its staff have no future role. The Board and staff must educate their lobbyist on substantive professional issues that matter to the field of infrastructure financing.

CHALLENGES

- Potential negative political ramifications. "Just because you can, doesn't mean you should."
- Expense: this set of skill comes with a cost. While money is a critical factor in hiring a lobbyist, the Board should weigh the overall value against the cost of investment.
- Ancillary benefits.

PROCESS

Washington procurement rules require seeking bids for costs greater than \$5,000. This includes:

- Development of a “Request for qualifications and quotations” (RFQ)
- Assistant Attorney General review of the RQQ
- Publication of the request – *through the usual state contracting publications as well as the Board’s outreach venues (website, facebook, twitter, etc.)*
- Proposal reviews
- Candidate selection
- Contract development and execution.

The next step would be for the Board to identify how this will be overseen by the Board. Staff recommends that the Executive Committee fill this role. It would include:

- Review and approval of the RFQ
- Review of all submittals
- Selection of the final candidates (this may/could include interviewing each submittal)

STAFF RECOMMENDATIONS:

- Reaffirm that this is the right path
- Direct staff to submit RFQQ
- Authorize the Executive Committee to oversee and select a lobbyist

**LOBBYING—STATE AGENCIES—PUBLIC WORKS AND IMPROVEMENTS—
Authority Of Public Works Board To Lobby The Legislature**

The Public Works Board has the authority to provide the legislature with information relating to the Board's business and may advocate for the Board's official positions and appropriation requests.

May 16, 2016

Stan Finkelstein
Chair, Public Works Board
PO Box 42525
Olympia, WA 98504-2525

Cite As:
AGO 2016 No. 5

Dear Mr. Finkelstein:

By letter previously acknowledged, you have requested our opinion on the following question:

Is the Public Works Board authorized to lobby in support of policy positions, budget positions, and appropriation requests that may be inconsistent with, or directly contrary to, positions advanced by the governor and other cabinet agencies?

BRIEF ANSWER

Yes. The Public Works Board has the authority to provide the legislature with information relating to the Board's business and may advocate for the Board's official positions and appropriation requests. This may take the form of lobbying for policy positions, budget positions, and appropriation requests that may be inconsistent with or directly contrary to the positions of others.

FACTUAL BACKGROUND

The Board was created to provide financial and technical assistance to local governments for public works projects. RCW 43.155.030. The Board has the power to accept state and federal loans or grants (RCW 43.155.040), and then assist local governments in financing public works projects (RCW 43.155.060(1)).

Your question pertains to the Board's responsibilities regarding construction loans. The Board evaluates construction loan proposals, determines whether they meet the statutory

qualifications, and then either prioritizes or ranks the projects. RCW 43.155.070(1)-(5). The Board then submits its funding recommendations to the legislature for approval. RCW 43.155.070(5)(b), (7); WAC 399-30-050(1). The legislature may remove projects from the Board's recommended list, but it cannot change the priority order of projects. RCW 43.155.070(8). The Board cannot finance a construction project without legislative approval.¹ RCW 43.155.070(8).

The governor also offers budget proposals to the legislature, based in significant part on the governor's review of budgetary requests from agencies. RCW 43.88.060. The governor may call upon agency representatives to testify to the legislature regarding the governor's proposed budget, but the statute does not address whether an agency representative may publicly disagree with the governor's proposed budget. *See* RCW 43.88.060.

In your letter, you indicate that appropriations for public works projects included on the Board's recommended list have not always been included in the governor's proposed budgets or in the final budgets adopted by the legislature. You ask whether the Board has the ability to lobby the legislature for appropriations that may be contrary to or inconsistent with the governor's proposed budget.

ANALYSIS

To answer your question, we first review agency lobbying authority in general. We then evaluate whether the legislature has specifically addressed the Board's authority. Notably, this opinion does not analyze whether it would be expedient to lobby contrary to the governor's position from a political or policy perspective. It also addresses only the authority of the Board itself and not that of individual Board members in their private capacities.

State boards and agencies generally have limited authority to lobby the legislature.² "Lobby" and "lobbying," as applied to your question, mean "attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington[.]" RCW 42.17A.005(30). Some communications by the Board to the legislature may not constitute lobbying at all. This is because RCW 42.17A.635(5)(d) specifies that "lobbying" does not include:

- (i) Requests for appropriations by a state agency to the office of financial management pursuant to chapter 43.88 RCW nor requests by the office of financial management to the legislature for appropriations other than its own agency budget requests;

¹ The Board has broader authority over other types of loans, such as pre-construction loans. RCW 43.155.065, .068, .070(9)-(10).

² A state board is included in the definition of "agency" for purposes of the State's lobbying and campaign finance disclosure laws. RCW 42.17A.005(2), .635.

(ii) Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(iii) Official reports including recommendations submitted to the legislature on an annual or biennial basis by a state agency as required by law;

(iv) Requests, recommendations, or other communication between or within state agencies or between or within local agencies;

(v) Any other lobbying to the extent that it includes:

(A) Telephone conversations or preparation of written correspondence;

(B) In-person lobbying on behalf of an agency of no more than four days or parts thereof during any three-month period by officers or employees of that agency and in-person lobbying by any elected official of such agency on behalf of such agency or in connection with the powers, duties, or compensation of such official. The total expenditures of nonpublic funds made in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington may not exceed fifteen dollars for any three-month period. The exemption under this subsection (5)(d)(v)(B) is in addition to the exemption provided in (d)(v)(A) of this subsection;

(C) Preparation or adoption of policy positions.

RCW 42.17A.635(5)(d); *see also* WAC 390-20-120 (Public Disclosure Commission form setting out its view of what lobbying does not include). The Board could engage in any of the forms of communication listed above, including submitting its priority list directly to the legislature as required by statute, without such actions falling within the definition of "lobbying."

If the Board were to engage in some other form of communication that would fall within the definition of "attempting to influence the passage or defeat of any legislation" (RCW 42.17A.005(30)), it would need to take into consideration the limits placed on state agencies' ability to lobby. State law generally prohibits expending public funds for lobbying, except as authorized by law. RCW 42.17A.635(2). The next statutory paragraph authorizes agency lobbying and the expenditure of public funds for such lobbying only if the lobbying is "limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency." RCW 42.17A.635(3). Additionally, agency officers and employees may communicate

“with a member of the legislature on the request of that member” and communicate “to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties.” RCW 42.17A.635(2). These statutes, taken together, provide the Board, acting through its members, with the general authority to lobby the legislature in support of official Board positions and appropriation requests.

Nothing in RCW 43.155 alters the scope of the Board’s general lobbying authority granted to it by RCW 42.17A.635. While lobbying is not one of the Board’s statutory duties, the legislature granted the Board the power to “[d]o all acts and things necessary or convenient to carry out the powers expressly granted or implied” under RCW 43.155. RCW 43.155.040(5). This likely includes advocating for funding of the projects it recommends. Additionally, the legislature specified that the Board’s priority list and funding recommendations are submitted directly to the legislature, not the governor, for approval. RCW 43.155.070(5)(b), (7). The Board is not precluded from submitting its proposals and advocating for their inclusion in the final budget simply because such proposals were not included in the governor’s proposed budget.

As a final note, although we conclude the Board has the legal authority to lobby for a position that differs from the governor’s position, individual Board members are still subject to a governor’s executive authority. If the governor determined that a board member’s actions constituted misconduct or malfeasance in office, the governor could remove the board member. RCW 43.06.070; RCW 43.155.030(5); *see also* Const. art. V, § 3. The member cannot appeal the governor’s decision (*State ex rel. Howlett v. Cheetham*, 19 Wash. 330, 332-33, 53 P. 349 (1898)) and is not entitled to a statement of the facts justifying the governor’s determination (*State ex rel. Davis v. Johns*, 139 Wash. 525, 536, 248 P. 423 (1926)).

We trust that the foregoing will be useful to you.



WROS

ROBERT W. FERGUSON

Attorney General

Jeff J. Egan
FOR

ANNIKA SCHAROSCH

Assistant Attorney General

(509) 456-3123



DATE: May 31, 2016
TO: Public Works Board
FROM: Cecilia Gardener, Executive Director
SUBJECT: Retaining an organization to provide managerial training

BACKGROUND:

The legislature authorized the Board to develop a training and education arm to assist local governments in increasing capacity by providing managerial training. This concept was not mandatory but encouraged using \$250,000 of existing operating resources. The Board started out by working with Board of Technical and Community Colleges (BTC), and determined that was not the best approach.

The Board is required to adhere to all State contracting guidelines. In order to pursue an alternative to using the BTC model, the Board must seek a “Request for Proposal” (RFP) to solicit a competitive pool of organizations that can provide this service. If this effort is successful, the Board will evaluate if this should be an ongoing program.

SCOPE OF TRAINING

The awardee would provide training tracts aimed at enabling local governments to manage their “systems” well. The training would be done on a regional basis and examples of curricula would be:

- | | |
|-----------------------------|-------------------------------------|
| • Financial sustainability, | • Asset management |
| • Rate Setting, | • Managerial sustainability |
| • Income surveys, | • Human resource management, |
| • Accounting, | • Emergency preparedness, |
| • Financial reporting, | • Public relations & public policy, |
| • Budgeting and | • The governing body and ethics. |

Timeline

- All resources would need to be expended by June 30, 2016.
- RFP Posted by June 13, 2016
- Proposals due June 27, 2016
- Staff threshold review and forward to Committee on July 1, 2016
- Board review and selection by July 7, 2016

STAFF RECCOMENDATION

- Direct staff to advertise an RFP to fulfill the Board’s goal of providing managerial training.



DATE: May 31, 2016
TO: Public Works Board
FROM: Cecilia Gardener, Executive Director
SUBJECT: Public Works Board Policy Development and Retreat

BACKGROUND:

Historically, the Board has a policy retreat every other year during the development of the biennial budget requests. The retreat has frequently taken place in August, but this year staff is recommending it be done September 8-9, 2016.

1. There three groups working on concepts to maximize state infrastructure investing. Hopefully the three groups can reach consensus prior to the Board retreat:
 - Board:
 - Local taxing authority
 - The Bond Bill (SB 5624)
 - Capital Appropriation request consisting of Construction (loan list), Pre-Construction, and Emergency funding.
 - Sustainable Infrastructure workgroup:
 - Strawman paper was developed by Rhys Roth (*attached*)
 - Office of Financial Management (OFM)
 - Unknown
2. Board members and staff need time to develop and review concept proposals.

STAFF RECCOMENDATION

- Continue to work with the three groups to identify concepts to thoroughly develop;
- Bring these concepts to the Board for consideration prior to the retreat and, if approved, develop associated budget or policy material to submit for legislative consideration; and
- Hold retreat on September 8-9, 2016, prior to final budget submittals (due September 19, 2016)
- Identify if the Board wants a facilitator, and if yes, secure one

Renewing the Public Works Trust Fund: Community Infrastructure Investment for the Next 30 Years

A New Vision and Straw Proposal for the PW Trust Fund 2.0

Quality infrastructure is the lifeblood of Washington's communities, vital to building healthy, prosperous, sustainable, and resilient communities of every size across the state.

Thirty years ago, Washington established the Public Works Trust Fund, creating a national model – the first revolving loan fund for community infrastructure. It's proven one of the state's great success stories, lending \$2.6 billion dollars to small, mid-size, and larger jurisdictions for infrastructure projects, with no defaults, since its inception.

The Trust Fund today is imperiled. Since 2013, the Legislature has redirected the Fund's accounts to help balance the State General Fund. But going forward, rather than eliminating or crippling a vitally important and successful infrastructure program, **we endorse a vision for renewing and retooling the PWTF for the next 30 years.**

The Public Works Trust Fund, established in 1985, was a brilliant innovation of enduring value. But 30 years later, it is time to retool the Fund to meet today's very different challenges and opportunities.

Washington communities are grappling with a range of infrastructure challenges, from escalating costs to manage infrastructure aged well beyond design life, to intensifying health, demographic, and environmental stresses, to new regulatory challenges. At the same time, growing shares of people in most communities in Washington are experiencing economic stress that makes utility bills a significant burden.

Infrastructure finance is growing not just urgent but also more difficult. According to a recent survey by the Association of Washington Cities, local elected officials and staff overwhelmingly support the statement, "*Grants are dwindling, debt service on loans is mounting, and red tape associated with funding often makes the funding not worth pursuing.*"

PROPOSAL: The Association of Washington Cities has asked the Center for Sustainable Infrastructure to develop a straw proposal and solicit feedback from a broad range of partners and stakeholders on various Trust Fund 2.0 policy concepts, for example:

Support and incentivize a smarter infrastructure investment discipline that delivers more value, multiple benefits, better asset and risk management, and improved cost-effectiveness for every dollar we spend on infrastructure.

Build on the best of the original Public Works Trust Fund, such as ease of paperwork and flexibility. PWTF 2.0 will not impose *unfunded mandates* on local jurisdictions. It will provide local communities that need help with the technical assistance to take advantage of best practices and new innovations in infrastructure planning, design, and investment.

The specific core elements of the straw proposal we'd like you to consider and discuss:

Redirect the PWTF's two traditional funding streams: repayments to the revolving loan fund pool (~\$100M/year) and dedicated tax revenues (~\$45M/year)

- **Trust Fund Repayments** (~\$100M/year) would be deployed to enhance financing for local infrastructure, but with **new ranking criteria** that result in smarter, strategic long-term investment and management best practices.
 - Low interest loans on a sliding scale will benefit most the small and medium sized communities with limited capacity to assemble complex financing deals.
 - Larger jurisdictions benefit from an additional stable lending option, though with lower subsidy and interest rates closer to market rate.

- **Trust Fund Dedicated Tax Revenues** (~\$45M/year) are converted to grants, divided into five streams to build local capacity for smart, cost-effective, locally-tailored investment and innovation:
 - **Circuit Riders:** Similar to Cooperative Extension Service, the regionally located Circuit Riders will provide non-formal education and technical assistance to infrastructure managers that most need help. Circuit Riders bring vital, practical evidence-based science, technology and management expertise, and financial strategies for pooling or bundling projects.
 - **'Value planning'** services at the crucial pre-design project level, where the greatest productivity gains and cost savings can be found (as well as project design grants once the right project is chosen), **and 'sustainable asset management'** services for optimizing investments system-wide and long-term .'
 - **Job training**, apprenticeship, technical certification, and other talent pipeline-building programs to prepare and equip the next generation infrastructure workforce in every part of the state.
 - **Innovation grants** to fill gaps where smart innovative approaches may disqualify a local jurisdiction from a key funding source, for local jurisdictions applying new advanced strategies locally for the first time, for feasibility studies on regionalization opportunities, or to pay the 'risk premium' for projects that implement and test promising new proof-of-concept project approaches.
 - **Centennial Clean Water** program to provide grants to low income communities, providing stability to a program which no longer has a dedicated funding source which has caused funding levels to vary widely in recent years.

- **Green infrastructure** and watershed restoration strategies that complement the local system's hard infrastructure assets will be fully eligible for grants and loans under Trust Fund 2.0 when they are shown to reduce overall system costs, broaden the value of the investment, and help advance solutions to key regulatory drivers.

TAB C

Budget Development



DATE: June 9, 2016, 2016
TO: Public Works Board
FROM: Cecilia Gardener, Executive Director
SUBJECT: Staff Proposed 2017-19 Biennial Budgets

BACKGROUND:

Each year the Board is required to submit a biennial budget proposal for consideration by the Governor and the Legislature. It is that time again. This memo will cover proposals that will address:

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> • Revenues • Operating Proposal • Capital Proposal | | <ul style="list-style-type: none"> • Policy Proposal • Activities |
|--|--|---|

STAFF RECOMMENDATION

Staff is requesting Board approval for the following Budget/Policy requests. These include the Board’s traditional programs (under the current Proviso requirements) and new initiatives. These initiatives have been reviewed and approved by the Department of Commerce and have been presented by Brian Bonlender to the Governor for consideration. They were received with enthusiasm, but need better definition; Concept papers for each initiative are attached with this memo.

Key items underway:

- Staff will launch the construction funding cycle on or before July 1st as mandated by statute.
- Stakeholder work with the Board to review and solicit input on the new Housing initiatives.
- Decision Package development for all requests.

SUMMARY OF AVAILABLE RESOURCES / DEMANDS ON THE FUND		
Activity	Amount	Comment
Total Available Resources	\$285,000,000	<i>Loan repayments, taxes, and end of year cash balance.</i>
Operating Budget Request	\$10,000,000	Covers all existing and new requests
Capital Budget Request	\$245,600,000	Covers Traditional and New initiatives
Total Requests	\$255,600,000	
Remaining Resources not committed	\$29,400,000	

ANTICIPATED REVENUES FOR 2017-19 BIENNIUM:

Revenues include loan repayments* and 2% of Real Estate Excise Taxes *estimated* to be received between July 1, 2016, and June 30, 2018.

Resources	Amount	Comment
Anticipated Beginning Balance 7/1/2016	\$11,000,000	There were significant deobligations from the 2015-17 Bien.
Loan Repayments	\$241,000,000	This could be slightly varied depending when clients submit payment.
% REET	\$33,000,000	
Anticipated biennial revenue	\$285,000,000	

**Loan repayments include the initial repayments anticipated from the construction loans and the affordable housing initiative loans.*

OPERATING REQUEST:

The Board receives a separate operating budget from its capital appropriation. The operating budget has been cut significantly over the last several years. In the 2015-17 biennium, the Board lost five FTEs. All of these FTEs were in the Technical Assistance unit. There were enough resources to cover loan and program administration. One of the new initiatives will add technical assistance capacity. There were new recipients of funding from the Public Works Assistance Account (PWAA) last biennium. It is anticipated that these recipients will continue to receive funding from the PWAA in the 2017-19 biennium. The chart below identifies the carryforward, assumed, and proposed operating requests:

OPERATING REQUEST BREAKOUT			
	ACTIVITY	AMOUNT	COMMENT
CARRYFORWARD	Board member expenses	\$120,000	Travel while on Board business (events, board meetings)
	Funding for 7.5 FTEs	\$2,749,550	Salaries, benefits, indirect, travel, and training for 7.5 FTEs dedicated to support the Board.
SUBTOTAL CARRYFORWARD		\$2,869,550	
ASSUMED	Growth Management	\$4,543,450	Salaries, benefits, indirect, travel, and training for staff in the Growth Management unit as well as a small amount for update grants to local governments.
SUBTOTAL ASSUMED		\$4,543,450	
EXPANDED TECHNICAL ASSISTANCE ATTACHMENT 1	FTE for the Small Communities Initiative	\$500,000	PWB dedicated FTE to assist specific communities; the Board will direct their work and activities. Includes \$250,000 for Board approved grants to assist communities
PROPOSED ATTACHMENT 2	Growth Managements – advanced planning grants	\$750,000	Comprehensive affordable housing initiative support through zoning, planning, etc. assistance. <i>Concept paper attached</i>
NEW OPERATING NEED FOR INDIRECT	Indirect coverage – 20% on administrative costs	\$438,341	The agency has adopted a new indirect methodology beginning July 1, 2016. The Board will need additional resources in the 17-19 biennium to meet the anticipated increased indirect costs.
NEW OPERATING NEED FOR INDIRECT RELATED TO ATTACHMENT 3	Indirect coverage-.25% of pass through funds for existing and anticipated capital projects.	\$297,500	The agency has adopted a new indirect methodology beginning July 1, 2016. The Board will need additional resources in the 17-19 biennium to meet the anticipated increased indirect costs.
SUBTOTAL PROPOSED		\$1,985,841	
TOTAL		\$9,398,841	

CAPITAL REQUEST:

The Board traditionally submits a Capital Budget request to fund the construction and non-construction traditional loan programs. The chart below identifies the proposed capital budget requests:

CAPITAL REQUEST BREAKOUT			
	ACTIVITY	AMOUNT	COMMENT
CARRYFORWARD DEMAND	Reappropriated resources for anticipated draws on remaining construction loans.	\$25,000,000	There will be a few 2012 and 2013 construction loans continuing into the next biennium.
RESOURCE FOR NEW LOANS	Traditional Board Loan Programs	\$90,000,000	Construction = \$80,000,000 Pre-Con, and Emergency* = \$10,000,000 <i>*Can be no more than 15% of total appropriation from PWAA.</i>
SUBTOTAL CARRYFORWARD		\$115,000,000	
ASSUMED	State match for the Clean Water and Drinking Water SRFs	\$18,000,000	This is based on 20% of the annual Capitalization Grants DOH and ECY received from the feds.
	Voluntary Stewardship – Conservation Commission	\$7,600,000	Estimated continuation of 15-17 biennial appropriation.
SUBTOTAL ASSUMED		\$25,600,000	
PROPOSED			Second piece in a three-pronged approach to addressing the affordable housing crisis. The loans are:
STAFF RECOMMENDED RELATED TO ATTACHMENT 3	PWB Loans and forgivable principal loans supporting statewide affordable housing investments (construction)	\$100,000,000	<ul style="list-style-type: none"> • Within the Boards current authority, • Dedicated to traditional activities, • Authorized by the Board, and • Targeted to support the affordable housing crisis. Additional work is needed to partner with the Commerce Housing programs and finalize the proposal.
SEED RESOURCES FOR SB 5624 ATTACHMENT 4	Provide seed money to the “Bond Program” (SB 5624)	\$5,000,000	Anticipate an initial investment in the SB 5624 bond proposal that has been under consideration for two sessions.
SUBTOTAL PROPOSED		\$105,000,000	
TOTAL		\$245,600,000	

POLICY PROPOSALS:

1. Development of a taxing authority proposal to assist local governments – Stan Finkelstein will draft a proposal for Board consideration and stakeholder work to be followed with input from the Governor’s office and legislators.
2. Work closely with Senator Keiser and the Office of the Treasurer to review and perfect SB 5624 (Bond Pooling Bill).

Department of Commerce – Concept Paper

Title: PWB/Small Community Assistance Enhancements
Division: Local Government Division
Date: 5/23/2016
Contact: Bruce Lund, Managing Director, 725-3163

Summary

Infrastructure at the end of their life cycles—small communities not able to adequately respond

Small, rural communities suffer from lack of financial, technical and staff resources to plan, construct, operate, and maintain complex infrastructure systems needed to maintain quality of place and quality of life. The Small Communities Initiative (SCI), a technical assistance program housed at Commerce is funded through a three-state agency partnership that provides comprehensive assistance to low capacity communities carrying out high cost, complex capital improvements to water and wastewater systems. This proposal adds the Public Works Board as a fourth partner to the funding network and establishes the Community Impact Fund. The new partnership and additional funding will provide increased SCI services to communities in need. Enhancing the SCI program will strengthen communities by adding additional resources that provide a combination of longer term, hands on, capacity building assistance, and targeted, short-term financial support to overcome specific barriers to completing a project.

Problem (under 500 words)

Disinvestment by Federal and state governments

Federal and state infrastructure funding has seen significant decreases over the past several years. While no comprehensive study exists to quantify the problem, need dramatically outpaces supply. Initial results from a study commissioned by the Infrastructure Assistance Coordinating Council indicates that over the past 11 years, its member agencies have invested \$7.2 billion dollars into Washington communities, and received requests of \$9.7 billion. This is not a complete figure, as it excludes agencies who have not reported at this point. On a national level, recent studies indicate that a significant economic impact is occurring. A recent study by the American Society for Civil Engineers found that outdated, deteriorated infrastructure in the United States costs every family \$3,400 per year.

Updating or replacing aged infrastructure not attainable for disadvantaged communities

Washington State has 163 incorporated communities with a population of under 6,000 people. That total dramatically rises to 963 communities when you include unincorporated communities and tribes (city-data.com). Most people take for granted safe drinking water, wastewater facilities that treat raw sewage, roads in good condition, and other local infrastructure. Unfortunately, this ideal is increasingly difficult to maintain for many of our state's small communities. As the cost to meet increased water quality standards and to replace or rebuild outdated infrastructure increases an entity can find that the ability to pay for these improvements is out of reach of their community. Huge construction costs to replace these systems, relative to the number of users in the service area, again create an affordability issue. SCI is currently working with a community of 1,000 people and the cost of replacing their wastewater treatment plant is estimated at \$13 million.

Capacity issues negate the ability to take full advantage of available resources

Even if the financing system had adequate resources to adequately fund local infrastructure needs, small communities often do not have trained staff capable of conceiving and carrying out a complex infrastructure project.

Often the who do the work of coordinating local projects is carried out by volunteers and elected officials. Many of the volunteers and policymakers are not professionally trained in public works and project management. This then can cause communities to make choices that may not be best for the citizenry, derail a project before it even begins, or introduce components of the project that may increase unneeded cost or complexity.

Few options for lower capacity communities to get help

The combination of these issues surrounding infrastructure financing leaves some communities with few options to acquire financing and develop capacity for sustainable infrastructure systems. SCI is a small two-person program that assists communities to take advantage of available resources and builds capacity for undertaking needed infrastructure projects. There is so much more need than the amount of assistance SCI is able to provide as at any one time the program can only assist a maximum of 25 communities at one time.

Proposal (100 words or less)

The problems described above facing small communities necessitate the need for longer term, comprehensive technical assistance approaches. SCI provides technical assistance to small, rural communities that often lack the capacity to rebuild infrastructure effectively. Through technical advice and facilitation, the program assists local elected officials and staff to develop infrastructure projects, make strategic investments, identify and access appropriate fund sources. With the Public Works Board authorizing projects for SCI assistance, up to 15 additional local jurisdictions per biennium can be assisted to undertake high priority capital projects.

By offering a flexible, highly targeted grant fund to assist communities to resolve specific program barriers or assist communities to qualify for available funding, SCI, through the Public Works Board, will be able to assist an additional 25 communities through grants over the biennium.

Cost estimate (if there is narrative limit is 100 words)

Line item	FY18 Estimate	FY19 Estimate	Total
1 FTE-COM 3	125,000	125,000	250,000
Community Impact Fund	125,000	125,000	250,000
Total	250,000	250,000	500,000

Fund Source: 058 Public Works Assistance Account

Stakeholder impact (200 words or less)

The concept of increasing SCI services is supported by the Association of Washington Cities. SCI’s primary client base is small communities with a population of less than 5,000. SCI annual work program is overseen by a multi-agency steering committee comprised of managers and staff from the Departments of Commerce, Health and Ecology, and the USDA Rural Development. The concept of enhancing SCI services combined with a small, flexible grant fund has also been endorsed by the SCI Steering Committee.

Efficiencies or returns on investment (300 words or less)

SCI has a proven track record assisting communities and state agencies to move forward on projects with low capacity communities. This includes:

- Maximizing the use of state and federal funds through developing coordinated funding strategies;
- More effective coordination of resolving regulatory and other issues that prevent projects from moving

forward;

- Better up front planning results in reduced project costs by ensuring the project is properly scoped, planned;
- On-the-ground environmental protection, public health and safety results,
- Ensuring that value for money (assessing life cycle costs), asset management, and other best practices are used in the project development phase.

How does this strengthen communities? (300 words or less)

The SCI program has been strengthening communities for 17 years achieving remarkable success for the communities they work with. In the long term, communities working with SCI staff have:

- Articulated and prioritized community goals, with a plan for how to move forward.
- Improved relationships with regulators and increased access to financing.
- Developed a better understanding of their drinking water and/or wastewater system, and their responsibility to manage the system(s) in a sustainable manner.
- Established a better understanding of what is required by regulators and how they can comply, resulting in more communities in compliance with environmental and public health regulations.

The Community Impact Fund will provide a resource for communities to develop strategies to resolve project barriers, undertake training and education to better manage and operate infrastructure systems for a sustainable future, prioritize needs, and determine ways a community can meet finance requirements and become eligible for funding.

Department of Commerce – Concept Paper

Title: GMA Affordable Housing Grants for Local Governments
Division: Local Government Division
Date: 5/25/2016
Contact: Ike Nwankwo

Summary

Commerce requests \$750,000 to fund a competitive grant program to implement Affordable Housing using one or more of these available tools:

1. Affordable Housing Incentives (RCW 36.70A.540);
2. Accessory Dwelling Units (ADUs); and/or
3. Planning & Environmental Review Fund (PERF).

Problem (under 500 words)

Many communities in Washington State are experiencing a shortage of affordable housing. The lack of affordable housing is impacting a growing number of low- and moderate-income residents, and this growing problem requires innovative financial incentives and land use tools to solve.

Housing is critical to the well-being of all Washington State citizens. Thriving communities must provide jobs for people to earn a good living, places to recreate, and choices that allow people to live safely and securely within their financial means. For cities and counties to sustain economic vitality and a good quality of life for all of its citizens, housing must be provided that meets the needs of the residents and workforce. Most recently, growth pressures, rapidly rising housing costs, slower rising incomes, and the loss of jobs have exacerbated housing affordability problems for local governments, especially in metropolitan centers where a sizeable segment of the population are homeless. Affordable housing is a goal under the Growth Management Act as stated at RCW 36.70A.020 (4) but this goal is becoming more and more difficult to achieve by many local governments.

Rising housing costs and rents leave few options for low- and moderate- income households to live near their places of work. Many people endure long

Daily commutes to work, further stressing the fixed budgets of lower-income households. More time

Commuting to and from work leaves less time for family life. A lack of public transit

In some parts of the state necessitates that many commuters must drive a car. A longer commute means more income is spent on gasoline and car maintenance, and as petroleum prices

Rise, these costs will most likely increase. Longer commutes also mean more traffic problems and increased air pollution. Without taking care of this problem now, the housing situation for much of the workforce, seniors, and lower-income families will worsen.

Potential tools under GMA include:

1. Affordable Housing Incentives (RCW 36.70A.540):

Under the GMA, the legislature encourages counties and cities to enact or expand affordable housing

incentive programs, including density bonuses and other incentives, to increase the availability of low-income housing for renter and owner occupancy in largely market-rate housing developments throughout the community, consistent with local needs and adopted comprehensive plans.

2. Accessory Dwelling Units (ADUs):

An accessory Dwelling Unit (ADU) is a habitable living unit that provides the basic requirements of shelter, heating, cooking, and sanitation. These ADUs, sometimes called "mother-in-law apartments," have all the basic facilities needed for day-to-day living independent of the main home, and can provide low-cost rental housing for today's smaller households.

3. Planning & Environmental Review Fund (PERF):

PERF funding supports upfront integration of environmental analysis with comprehensive planning and development regulations. When project-level environmental analysis has been completed, development proposals consistent with the plan need not conduct additional site-specific environmental analysis to determine mitigation responsibilities. PERF can enhance a community's ability to attract redevelopment to sites burdened by complex regulatory problems or sites requiring advanced mitigation.

Proposal (100 words or less)

A competitive grant program for local government to address affordable housing through available GMA tools, which may include:

Affordable Housing Incentives (RCW 36.70A.540):

Funding to help jurisdictions develop and adopt effective affordable housing incentives will help address this serious affordable housing shortage.

Accessory Dwelling Units (ADU):

Funding to assist local governments with developing ADU ordinances will help address housing affordability for a segment of the low and moderate income residents.

Planning & Environmental Review Fund (PERF):

Enhancing a community's ability to attract redevelopment to sites burdened by complex regulatory problems or sites requiring advanced mitigation.

Cost estimate (if there is narrative limit is 100 words)

Line item	FY18 Estimate	FY19 Estimate	Total
Affordable Housing Grant	375,000	375,000	750,000
Total	375,000	375,000	750,000

Fund Source: 058

Stakeholder impact (200 words or less)

The impact on stakeholders is expected to be positive as in previous cases. These programs, especially PERF, have been well received by the Association of Washington Cities (AWC), business associations, realtors, and the development community. Housing advocates also strongly support these programs.

Efficiencies or returns on investment (300 words or less)

Efficiencies or returns from this proposal include helping jurisdictions better comply with the GMA housing goal. Without the affordability component of this program, the housing market would mostly follow market trends and produce market rate housing. Additionally, cities and counties benefit from these grants. They provide financial relief to accomplish a state mandate and in this case provide much needed affordable housing. This program is complementary to other agency strategies to provide affordable housing. Once implemented, these tools rely primarily on the private market for actual housing production, so the cost per unit is far lower than direct construction of affordable housing.

How does this strengthen communities? (300 words or less)

Creating more incentives and tools for local governments to address affordable housing will help to reduce homelessness, improve the lives of low- and middle-income labors who work in these communities, yet are unable to afford to live there, including city employees, teachers, nurses, and police officers. Additionally, the successful use of these tools that result in more housing and household variety could make the community more attractive for some businesses to locate. This could help the city generate more taxes and revenue, and increase local preparedness for future economic development.

Department of Commerce – Concept Paper

Title: Leveraging PWAA to Maximize Affordable Housing Initiative
Division: LGD
Date: 6/6/16
Contact: Cecilia Gardener

Summary

Use the Public Works Assistance Account for public infrastructure related costs of building or improving residences to help ameliorate the affordable housing shortage occurring throughout Washington.

Problem (under 500 words)

Affordable housing is scarce in the metropolitan regions of Washington state. Vancouver area vacancy rate is between 2.4 and 3.5%. King County vacancy rates hover around 2%; Spokane and the Tri-Cities area are also experiencing affordable housing shortages. The average rent in Seattle is \$1600 per month for a one bedroom apartment while the cost of a typical single-family home in April 2016 was more than \$630,000. These prices reflect a 10.8% growth between March 2015 and March 2016 (S &P/Case-Shiller Home Price Indices). Working 40 hours a week for a \$15/hour minimum wage equals a gross income of \$31,200 per year. \$1600 in rent expense would be 62% of a minimum wage worker's gross annual income.

The Housing Trust Fund (HTF) was established to assist low and very-low income citizens in meeting their basic housing needs. HTF can fund every aspect of a project that meets their mission. However, the costs of these projects escalate due to fluctuations in land prices, labor markets, and demand.

These projects, at times, may include upgrades to publically owned infrastructure necessary to create safe, livable areas, such as upgrades to wastewater treatment plants, improvements to streets, sidewalks, and lighting, increased water transmission mains, stormwater management, and site acquisition.

The Public Works Assistance Account (PWAA) was established to provide affordable infrastructure financing for local governments. This includes all aspects of publically owned infrastructure repair, replacement, initial construction, as well as energy, water, and transportation usage efficiencies.

Utilizing PWAA funding for the publically owned infrastructure construction elements of HTF affordable housing projects enables HTF funding to be used more efficiently for direct investment in the construction and rehabilitation of privately owned housing stock purchased by nonprofit public development authorities and public housing authorities.

Proposal (100 words or less)

Invest PWAA funding to improve and/or extend publically owned infrastructure elements necessary to maximize the HTF investment in affordable housing projects [specifically addressing 43.185.070(5)(a)(b)(d) (f)(m)and(n)RCW]

Cost estimate (if there is narrative limit is 100 words)

Line item	FY18 Estimate	FY19 Estimate	Total
Fund 058	\$50,000,000	\$50,000,000	\$100,000,000
Total	\$50,000,000	\$50,000,000	\$100,000,000

Fund Source:058**Stakeholder impact (200 words or less)**

Association of Washington Cities has both infrastructure and housing as legislative priorities. This proposal dovetails to help achieve both of those priorities. (<http://www.awcnet.org/Advocacy/Citylegislativepriorities.aspx>)

Washington State Association of Counties has infrastructure funding for water projects (drinking water, stormwater, flood control, etc.) and public health funding as legislative priorities. This proposal directly supports the water project priority and supporting affordable housing is one aspect towards helping support ongoing public health efforts. http://wsac.org/wp-content/uploads/2016/04/2016_Legislative_Agenda.pdf

Washington Association of Sewer and Water Districts has sustainable and resilient infrastructure as a keystone for its members. This proposal supports that by providing infrastructure funding that maximizes the use of our public water and sewer systems.

Washington Public Utility Districts Association has infrastructure funding for basic infrastructure projects as well as clean energy goals as part of its public policy position. This proposal supports strategic infrastructure investment as well as clean energy goals by supporting housing in urban locations, thus cutting down on commuting needs. <http://www.wpuda.org/pud-issues-and-information>

This proposal supports the goals of public and not-for-profit housing organizations by enabling their limited funds to go farther through the use of PWAA funds for the publically owned infrastructure portion of projects.

Efficiencies or returns on investment (300 words or less)

Efficiencies are created when funds that can be used for specific purposes (e.g., infrastructure, housing, etc.) are targeted in larger projects in order to maximize the use of all funds. This proposal allows for HTF dollars to be more directly invested in repair and construction of housing while PWAA dollars are used to increase the local governments' infrastructure necessary to support a livable, affordable community.

How does this strengthen communities? (300 words or less)

Affordable housing is comprised of more than cheap rent. It includes reasonable commute times, access to public transportation, a livable neighborhood, and reasonable utility rates. Expensive utility rates and/or challenging pedestrian access can make reasonable housing rates unattainable despite actual rent prices being reasonable. This proposal supports the creation affordable neighborhood development by strategically investing in publically owned infrastructure with PWAA funds in order to enable HTF to be directly invested in rehabilitating and construction new affordable housing stock. Instead of using HTF monies to improve streets, sidewalks, and water/sewer mains in order to increase the population to be served, those monies will be used directly on housing creation. PWAA monies will be used to increase the livability of the investment area through infrastructure improvements.



DATE: June 2, 2016

TO: Public Works Board

FROM: Cecilia Gardener, Executive Director

SUBJECT: Development of a ranked recommended loan list

BACKGROUND:

Per RCW 43.155 requires the Board to submit a recommended loan list of projects to the legislature each year for funding from the Public Works Assistance Account. The current proviso under RCW 43.155 specifically requires the Board to submit a loan list for FY18 (July 1, 2017-June 30, 2018). The list shall be developed under the current proviso that specifies how the Board will score and rank projects. Attached is a listing of all the current and proviso language that impacts the selection process.

Key elements unique to this cycle:

1. New selection criteria to rate and rank projects
2. Drinking Water and Sanitary Sewer State Revolving Fund eligible projects are NOT eligible for PWAA funding.
3. Staff requested the Office of Financial Management to work with legislative staff to remove the “requirement to submit a list”. This request was unsuccessful
4. Timing – We are five months late in the list development process due to our assumption that item 3 (above) would be approved. However, the request was lost in the budget development shuffle on the hill. This was not known until the Supplemental Budget passed in April.

Effort to date:

1. Staff has reached out to our fellow funders for projects that were “ineligible” for SRF programs and thus eligible for PWAA funding. Examples include growth activities, land acquisition, some activities defined as maintenance, etc.
2. Both the Departments of Health and Ecology have provided projects that were deemed ineligible, but not enough to develop a “list” with.
3. Reviewed the idea of a “short application” that was not a burden to communities. As we reviewed the criteria, it will be extremely difficult if not impossible to have a smaller application and accommodate all of the selection criteria that are expected by the Legislature. We have to have enough data to score elements. Check boxes won’t suffice.

There are three attachments referencing elements associated with list development and budget submittal deadlines and procedures.

Attachment 1 Timeline

Attachment 2 Current and proviso criteria for loan list development

Attachment 3 Agency Request Legislation – 2017 Legislative Session instructions

STAFF RECOMMENDATION:

- Pursue a traditional competitive cycle with the revised criteria and limitations;
- Modify application and scoring to incorporate proviso language;
- Bring a list to the Board in September of the volume of submittals are manageable, or October for approval and recommendation to the Legislature; and
- Submit the loan list as a bill to be considered by the legislature.

Due to the truncated timeline, the Board will miss the window to submit the Loan List for consideration in the Governor's budget using the usual timeframe. Staff will work with the Governor's office and the Office of Financial Management to submit a place holder for consideration in the Governor's budget, with project specific details to be submitted after the Board's selection process, approximately late October 2016.

TIMELINES							
	JUNE	JULY	AUGUST	SEPT	OCT	NOV	DEC
Agency/ State Budget Timeline →	3rd - Commerce Exec Team –Concept Paper (CP) review and prioritization 13th – Director’s final decisions on CP to move forward to Decision Package (DP)	<i>Decision Package development</i>	<i>Decision Package submittal</i>	19th - All budget material submitted to OFM!*			<i>Governor releases Budget (second or third week)</i>
	JUNE	JULY	AUGUST	SEPT	OCT	NOV	DEC
PWB policy/ budget Timeline →	10th - Approve budget/policy placeholders 10th - Approve application process	1st - Launch Application Hold webinars Provide app technical assistance	<i>Draft possible policy legislation</i> 19th -Applications Due 22nd Start application review	<i>Complete application review</i>	20th - Present list to Board For approval	1st -Loan List delivered to House and Senate	

*** The due date for all state agency submittals is Monday, September 19, 2016. Only requests submitted through the Bill Analysis and Tracking System (BATS), including all required elements, will be considered**

Statutory Requirements

RCW 43.155.070 - THRESHOLD

- (1) To qualify for financial assistance under this chapter the board must determine that a local government meets all of the following conditions:
 - (a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;
 - (b) The local government must have developed a capital facility plan; and
 - (c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.
- (2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

RCW 43.155.070 – CONSIDERATIONS/SCORING

- (3) In considering awarding financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

Most Recent Criteria in RCW
Black Text = Existing criteria
Red Text = New

- (4) The board must develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board must attempt to assure a geographical balance in assigning priorities to projects. The board must consider at least the following factors in assigning a priority to a project:
 - (a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;
 - (b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

- (c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;
 - (d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;
 - (e) **Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance;**
 - (f) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;
 - (g) The cost of the project compared to the size of the local government and amount of loan money available;
 - (h) **The number of communities served by or funding the project;**
 - (i) Whether the project is located in an area of high unemployment, compared to the average state unemployment;
 - (j) **Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;**
 - (k) Except as otherwise conditioned by RCW 43.155.120, and effective one calendar year following the development of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;
 - (l) **The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and**
 - (m) Other criteria that the board considers advisable.
-

Proviso criteria -

Black Text = Existing criteria

Red Text = New

- (5) **For the 2015-2017 fiscal biennium, in place of the criteria, ranking, and submission processes for construction loan lists provided in subsections (4) and (7) of this section:**
 - (a) **The board must develop a process for numerically ranking applications for construction loans submitted by local governments. The board must consider, at a minimum and in any order, the following factors in assigning a numerical ranking to a project:**
 - (i) Whether the project is critical in nature and would affect the health and safety of many people;
 - (ii) **The extent to which the project leverages non-state funds;**
 - (iii) The extent to which the project is ready to proceed to construction;
 - (iv) Whether the project is located in an area of high unemployment, compared to the average state unemployment;
 - (v) **Whether the project promotes the sustainable use of resources and environmental quality;**
 - (vi) Whether the project consolidates or regionalizes systems;

- (vii) Whether the project encourages economic development through mixed-use and mixed income development consistent with chapter 36.70A RCW;
 - (viii) Whether the system is being well-managed in the present and for long-term sustainability;
 - (ix) Achieving equitable distribution of funds by geography and population;
 - (x) The extent to which the project meets the following state policy objectives:
 - (A) Efficient use of state resources;
 - (B) Preservation and enhancement of health and safety;
 - (C) Abatement of pollution and protection of the environment;
 - (D) Creation of new, family-wage jobs and, avoidance of shifting existing jobs from one Washington state community to another;
 - (E) Fostering economic development consistent with chapter 36.70A RCW;
 - (F) Efficiency in delivery of goods and services, public transit, and transportation;
 - (G) Avoidance of additional costs to state and local governments that adversely impact local residents and small businesses; and
 - (H) Reduction of the overall cost of public infrastructure; and
 - (xi) Other criteria that the board considers necessary to achieve the purposes of this chapter.
- (b) Before November 1, 2016, the board must develop and submit to the appropriate fiscal committees of the senate and House of Representatives a ranked list of qualified public works projects which have been evaluated by the board and are recommended for funding by the legislature. The maximum amount of funding that the board may recommend for any jurisdiction is ten million dollars per biennium. For each project on the ranked list, as well as for eligible projects not recommended for funding, the board must document the numerical ranking that was assigned.
- (6) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.
- (7) Before November 1st of each even-numbered year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (10) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list must include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list must also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

Agency Request Legislation – 2017 Legislative Session

REQUIRED ELEMENTS CHECKLIST

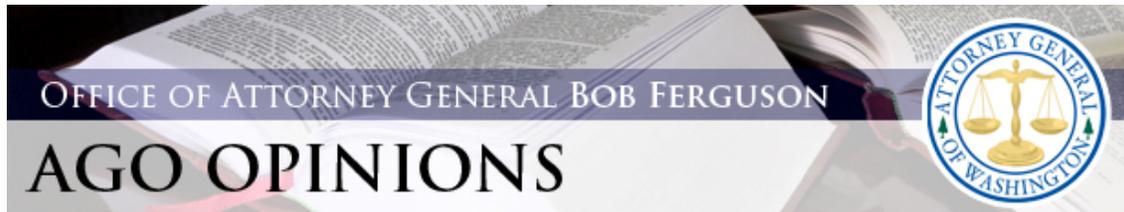
- Legislative proposals will not be reviewed until a complete package is received in the Bill Analysis and Tracking System (BATS).
- Agency heads must review and approve each legislative proposal prior to submittal.
- Proposals requiring commission or advisory committee endorsements should be presented well in advance to ensure submittals meet the deadline.
- A complete package includes:
 - A statement that explains why you need the bill, what problem the bill is designed to correct, and how it is tied to a Governor’s priority.
 - A summary of major provisions in the draft bill and impacts on current law.
 - Irrespective of whether a bill has a fiscal impact, a completed fiscal note from each of the affected state agency(s), including local government (coordinate with Department of Commerce).
 - The official Code Reviser draft of the proposed legislation containing Z-draft number. (If revisions are made during the review process, submit the requisite copy in BATS as soon as it is available).
 - Agency’s budget decision package (if the legislation is tied to a budget request).

The following information must be entered in the Agency Contacts field in BATS; include position titles, agency names, entity names, phone numbers and any other pertinent information in the “Description” field:

- Names, titles, and phone numbers for subject matter experts in your agency who are available to answer policy and fiscal impact questions related to the proposed bill.
- The agency’s Assistant Attorney General who reviewed the proposed bill draft.
- All state and local government agencies affected by the proposed bill, their positions, and each agency’s representative (and contact information) who may speak to the issue(s).
- Stakeholder work is required prior to submittal.
 - Proposals without adequate stakeholder work and analysis will be rejected.
 - Stakeholders (e.g., constituent groups, legislators, tribal governments) must be entered into the system.
 - Provide contact person name, entity name, their position and any concerns.

TAB D

Information and Other Items



**DEPARTMENT OF FISH AND
WILDLIFE—PERMIT—WATER—RIVER—TIDELANDS—Regulatory Authority
Under The Hydraulic Project Approval Process Related To Activities Above
The Ordinary High Water Line**

The regulatory authority of the Department of Fish and Wildlife to require hydraulic project approval is not limited to activities conducted at or below the ordinary high water line. It includes authority over work “that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.” Fixing a precise limit to the Department’s authority above the ordinary high water line is impossible in the abstract; whether a particular project is subject to hydraulic project approval will depend on the facts in the given situation.

June 3, 2016

James Unsworth, Ph.D.
Director, Department of Fish and Wildlife
600 Capitol Way N
Olympia, WA 98501-1091

Cite As:
AGO 2016 No. 6

Dear Dr. Unsworth:

By letter previously acknowledged, you requested our opinion on two questions we paraphrase as follows:

1. Does RCW 77.55 limit the regulatory authority of the Washington Department of Fish and Wildlife (WDFW) under the Hydraulic Project Approval (HPA) process to activities conducted at or below the ordinary high water line?
2. If the answer to the first question is no, then what conditions must be present to justify WDFW's exercise of HPA authority on activities conducted above the ordinary high water line?

BRIEF ANSWERS

No. RCW 77.55's plain language does not limit WDFW's HPA authority solely to activities at or below the ordinary high water line.

With some statutory exceptions, WDFW is justified in exercising HPA authority on any activity that meets RCW 77.55.011(11)'s definition of a "hydraulic project," regardless of

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whether the activity is above or below ordinary high water lines. The activity must be construction or performance of work that *affects* state waters below the ordinary high water line by using, diverting, obstructing, or changing the *natural flow* or *bed* of the state water. This authority clearly extends to hydraulic projects landward of the ordinary high water line, though exactly how far beyond the ordinary high water line the authority extends will depend on the facts of any given circumstance.

BACKGROUND

Your questions concern RCW 77.55, which sets forth WDFW's regulatory authority over "hydraulic projects," a term that refers to certain construction and work affecting state waters. RCW 77.55.021(1) states:

Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and 77.55.361, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

The specified statutory exceptions are driving across an established ford (RCW 77.55.031); removing or controlling certain invasive plants (RCW 77.55.051); removing derelict fish, crab, and shellfish gear (RCW 77.55.041); and permitting under the forest practices act (RCW 77.55.361).

RCW 77.55.011 defines three terms used in RCW 77.55.021(1):

- “Department” is WDFW. RCW 77.55.011(5).
- “Permit” is “a hydraulic project approval permit issued under [RCW 77.55].” RCW 77.55.011(18). Such permits are commonly referred to as “HPA permits.”
- “Hydraulic project” means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.” RCW 77.55.011(11).

RCW 77.55 does not define “hydraulic” as a term independent of “project.” Nor does it define “flow,” natural or otherwise. RCW 77.55.011, however, does define two terms used in the meaning of “hydraulic project”:

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- “‘Waters of the state’^[1] and ‘state waters’ means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.” RCW 77.55.011(25).
- “‘Bed’ means the land below the ordinary high water lines of state waters” excluding all artificial watercourses but for those located where a natural watercourse previously existed. RCW 77.55.011(1).

RCW 77.55.011 further defines “ordinary high water line,” used in both the definitions of “state waters” and “bed”:

- An “ordinary high water line” is “the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.” RCW 77.55.011(16).

The statute also describes a process for obtaining WDFW’s approval before starting a hydraulic project. Specifically, RCW 77.55.021(2) requires proponents of a hydraulic project to submit an application. Among other things, the application must include “[g]eneral plans for the overall project,” “[c]omplete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater,” and “[c]omplete plans and specifications for the proper protection of fish life[.]” RCW 77.55.021(2)(a)-(c).

Finally, RCW 77.55.021(1) describes the purpose of WDFW's review of an application as the evaluation of "the adequacy of the means proposed for the protection of fish life." RCW 77.55.021(7)(a) further provides that "[p]rotection of fish life is the only ground upon which approval of a permit may be denied or conditioned." Under RCW 77.55.231(1), any conditions imposed by WDFW on an HPA permit "must be reasonably related to the project."

With this statutory background in mind, we turn to the analysis of the activities subject to an HPA permit.

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ANALYSIS

1. Does RCW 77.55 limit the regulatory authority of the Washington Department of Fish and Wildlife (WDFW) under the Hydraulic Project Approval (HPA) process to activities conducted at or below the ordinary high water line?

RCW 77.55.021(1) establishes WDFW's HPA permitting authority. The statute imposes the obligation to obtain an HPA permit on persons or government agencies wanting to undertake a hydraulic project. Thus, the definition of "hydraulic project," as RCW 77.55 uses that term, is key to determining the extent of WDFW's HPA authority. If a statute defines a term, that definition is the basis of interpreting the statute. *United States v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999 (2005). If a term is undefined, we look to its plain meaning. *Id.* If a statute's meaning is unambiguous, statutory construction ends with the plain-meaning analysis. See *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, 435–36, 359 P.3d 753 (2015). If, however, a statute retains more than one reasonable meaning, other matters such as legislative history are considered. *Id.*

RCW 77.55.011(11) defines a "hydraulic project" as "the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." Nothing in the plain language of this definition requires that the work take place below the ordinary high water line to qualify as a hydraulic project. Under the basic rules of grammar, the main object in the definition—construction or performance of work—is modified *not* by its location *in* state waters, but by *its effect* on state waters. Moreover, some types of work done above the ordinary high water line clearly can divert, obstruct, or change the "natural flow or bed" of state waters. For example, bulldozing a steep bank directly above a river could change the river bed and divert, obstruct, or change the river flow if the work is undertaken without proper protections and significant waste

material falls into the river. Similarly, placement of structures in a floodway above the ordinary high water line can redirect flood flows causing catastrophic change to fish habitat in river beds. To give a final example, a structure above the ordinary high water line can change tidal beds (destroying forage fish habitat) by diverting wave action at extreme high tide, causing scour erosion and blocking the sloughing of sands that nourish beaches.

Despite this plain language, commenters have offered three main arguments as to why they believe that HPA authority ends at the ordinary high water line. We explain in turn why we reject each one.

First, some have argued that WDFW's HPA authority is limited to work performed below the ordinary high water line because the statute defines "bed" as "the land below the ordinary high water lines of state waters." RCW 77.55.011(1). But the statute does not define hydraulic projects as work performed *on* the bed of state waters, but rather as "work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." RCW 77.55.011(11). As noted previously, work above the ordinary high water line can

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obstruct or change the bed of state waters. And in any case, the statute also covers "work that will use, divert, obstruct, or change the natural *flow*" of state waters. RCW 77.55.011(11) (emphasis added).

Second, some have argued that the first three verbs in the definition of "hydraulic project"— "use, divert, [and] obstruct"— make sense only if the regulated activity itself is taking place *in* the water. As we note above, however, upland activities can divert or obstruct the flow and beds of water bodies. In any event, we cannot ignore the final verb—"change"—just because it is arguably broader than the other three. While courts attempt to give meaning to every word in a statute (*McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004)), there is no rule of statutory construction that every word in a statute must be relevant to every application of the statute.

Third, some have argued that a project must take place below the ordinary high water line to be a "hydraulic project," because the dictionary meaning of "hydraulic" is "of or relating to water." *Webster's Third New International Dictionary* 1107 (2002). This reasoning is mistaken because RCW 77.55.011(11) provides a statutory definition of a "hydraulic project." Therefore, we rely on the statutory definition. *Hoffman*, 154 Wn.2d at 741. In the context of this statute,

“hydraulic project” is a term of art, the meaning of which would be lost if we simply characterized a project as a hydraulic project because it is in or uses the water.

The statutory context as a whole confirms our plain language interpretation. See, e.g., *Diaz v. State*, 175 Wn.2d 457, 466, 285 P.3d 873 (2012) (Statutes relating to the same subject are interpreted in light of each other, “considering all statutes on the same subject, taking into account all that the legislature has said on the subject, and attempting to create a unified whole.” (citing *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001))). Several provisions in RCW 77.55 refer to the ordinary high water line in ways that would be unnecessary if WDFW had no authority beyond that point. See, e.g., *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004) (“The legislature is presumed not to include unnecessary language when it enacts legislation.”). For example, RCW 77.55.161(3)(c) prohibits WDFW from requiring changes to storm water outfalls above the ordinary high water line, which would be unnecessary if WDFW had no authority above the ordinary high water line. Similarly, RCW 77.55.321(1) allows WDFW to charge an application fee only where the project is located at or below the ordinary high water line, a limitation that would be unnecessary if WDFW had no authority to issue permits for projects above the ordinary high water line.

Finally, RCW 77.55 references projects that could occur, at least in part, above the line of ordinary high water and are subject to an HPA permit. For example, “stream bank stabilization” is subject to permits under RCW 77.55.021(9)-(15). RCW 77.55.011(23) defines “stream bank stabilization” as projects that include “bank resloping,” “planting of woody vegetation,” and “bank protection,” which would necessarily include the area above the ordinary high water line. Other examples are dikes in RCW 77.55.131, bulkheads in RCW 77.55.141, and shoreline armoring, riparian habitat, and boat ramps in connection with marinas under RCW 77.55.151.

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For these reasons, we conclude that RCW 77.55’s plain language does not limit WDFW’s HPA authority solely to activities at or below the ordinary high water line. Because the statute is unambiguous, other means of statutory construction are unnecessary. Nonetheless, because some commenters have raised alternative—albeit incorrect—interpretations of the statute and its legislative history, we address means of statutory construction necessary only if a statute is ambiguous.

Where a statute is ambiguous, courts defer to reasonable interpretations offered by the agency charged with implementing the statute. See, e.g., *Cornelius v.*

Dep't of Ecology, 182 Wn.2d 574, 585, 344 P.3d 199 (2015) (“[W]e give the agency’s interpretation of the law great weight where the statute is within the agency’s special expertise.”). For decades, WDFW has construed its authority over hydraulic projects as extending to work above the ordinary high water line. For example, in *In re Denial of an Hydraulic Project Approval to Young*,^[2] a 1997 administrative case concerning a replacement bulkhead built inland from an existing bulkhead, the administrative law judge concluded “[c]learly a project which is located within the ordinary high water mark would fall within the jurisdiction of the department. This is not the exclusive criteria, however, to determine whether an HPA is required.” Initial Order at 8. “[T]he pivotal question is . . . whether the construction of the bulkhead did use, divert, obstruct or change the natural flow or bed of the lake.” *Id.* WDFW’s director formally adopted the conclusions as his own. Modifying Order at 1; see also Letter from Gary Locke, Governor, State of Washington, to Ivan Urnovitz & Vernon Young, Northwest Mining Ass’n (Sept. 6, 2000) (attached).

WDFW’s prior decisions also underscore the potentially absurd result that could ensue if HPA authority ended abruptly at the ordinary high water mark. We should avoid a reading of a statute resulting in absurd or strained consequences subverting legislative intent. See *Bowie v. Dep’t of Revenue*, 171 Wn.2d 1, 14-15, 248 P.3d 504 (2011). That the legislature intended the HPA review to protect fish life is clear from RCW 77.55.231, which identifies the purpose of the review as evaluation of whether the means to protect fish life are adequate. Further, RCW 77.55.021(7)(a) limits the reasons for denial or conditioning an HPA permit to protection of fish life. If the facts of a case show that a project above the ordinary high water line impacts fish life—as in the case of *In re Denial of an Hydraulic Project Approval to Young*—WDFW would be unable to protect fish life merely because the project is just above the ordinary high water mark. See Initial Order at 3 (the WDFW biologist agrees the high water mark is waterward of the existing bulkhead), 5, 10 (a concrete bulkhead has a detrimental effect on fish life though above the ordinary high water line). This would be an absurd consequence subverting legislative intent. Thus, the better reading is that HPA review is not limited to projects solely below the ordinary high water line.

We look finally at RCW 77.55’s legislative history to determine legislative intent. *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 527, 243 P.3d 1283 (2010). We find nothing in

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the legislative history of RCW 77.55 to reach a conclusion different from that we reached through plain meaning analysis.

The state first enacted a statutory obligation for hydraulic project approval in 1943. Laws of 1943, ch. 40. The requirement for a permit applied to a person, firm, corporation, or government agency desiring to

construct any form of hydraulic project or other project that will use, divert, obstruct or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds[.]

Laws of 1943, ch. 40, § 1.

In 1949, the legislature retained the 1943 act when enacting a comprehensive fisheries code. Laws of 1949, ch. 112. With a few exceptions, the substance of this provision remained unchanged from 1943 to 1983. Laws of 1949, ch. 112, § 48. One exception was a change in 1967 whereby “any form of hydraulic project or other *project*” (Laws of 1955, ch. 12, 75.20.100 (emphasis added)) became “any form of hydraulic project or other *work*” (Laws of 1967, ch. 48, § 1 (emphasis added)). Another change in 1975 added the definition for “bed” as meaning “that portion of a river or stream and the shorelands within the ordinary high water lines.” Laws of 1975, 1st Ex. Sess., ch. 29, § 1.

In 1983, the legislature overhauled the fisheries code, including the provisions concerning hydraulic project approval. Laws of 1983, 1st Ex. Sess., ch. 46. The provision currently codified as RCW 77.55.021(1) received only the addition of “salt or fresh” to describe the “waters of the state.” Laws of 1983, 1st Ex. Sess., ch. 46, § 75.

In 1986, the legislature made additional changes. Laws of 1986, ch. 173. With the changes, the obligation to obtain a permit applied to any person or government agency desiring to

construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state[.]

Laws of 1986, ch. 173, § 1.

An attachment to your request letter noted that the legislature entertained two bills in the 1990s that would have statutorily limited WDFW’s hydraulic project approval to work at or below the ordinary high water line. The first was Senate Bill 5085 in 1993, which the legislature did not pass. The second was Senate Bill 5632 in 1995, which did pass (as E2SSB 5632) but without the provision that would have limited WDFW’s hydraulic project approval to work at or below the ordinary high

water line. The courts “are loathe to ascribe any meaning to the Legislature’s failure to pass a bill into law.” *State v. Cronin*, 130 Wn.2d 392, 400, 923 P.2d 694

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(1996). Therefore, we do not believe the fact that the provisions did not pass is informative about the extent of WDFW’s HPA authority. We nonetheless note that the passage of the 1995 bill without the express language indicates that the legislature considered changing, but did not, the longstanding statutory language.

The next significant reenactment occurred in 2005. Laws of 2005, ch. 146. The legislation repealed the prior version of the provision currently codified as RCW 77.55.021(1), replacing it with the current version. Laws of 2005, ch. 146, § 201. The new definition of “hydraulic project” was the same as currently codified at RCW 77.55.011(11), described above. Laws of 2005, ch. 146, § 101. The new definitions section provided by the 2005 legislation also added definitions for “waters of the state,” “state waters,” “bed,” and “ordinary high water line.”

The legislative history regardless of whether identified as a “hydraulic project or . . . other work” or a “hydraulic project” under the new statutory definition, the obligation to obtain an HPA permit has been for any work affecting the flow or bed of state waters regardless of the activity’s location. RCW 77.55 shows consistency of language throughout the 73 years since its first enactment. The legislature did not alter or modify the language at any point in a manner that would signal an intention different from the plain meaning of the current version. Relative to the ordinary high water line. Whether under plain meaning analysis or other means of statutory construction, RCW 77.55 does not limit WDFW’s authority to activities at or below the ordinary high water line. We turn now to your second question.

2. If the answer to the first question is no, then what conditions must be present to justify WDFW’s exercise of HPA authority on activities conducted above the ordinary high water line?

For WDFW’s HPA authority to extend to any activity, regardless of whether it is above or below the ordinary high water line, the following conditions must be present:

- The activity must be *construction or performance of work*; and
- The activity must either:
 - (1) Use, divert, obstruct, or change the *natural flow* of the state water or
 - (2) Use, divert, obstruct, or change the *bed* of the state water.

RCW 77.55.011(11) (definition of “hydraulic project”).^[3]

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Some commenters claim that the lack of a boundary to HPA authority leads to an absurd result. In their view, if WDFW’s HPA authority is not limited to the ordinary high water line, there is no limit to the extent of WDFW’s authority because all work within a floodplain or watershed affecting runoff has the potential (theoretically) to “change” the natural flow. We see two flaws in this concern.

First, WDFW has not historically interpreted its authority so broadly, instead requiring permits only for activities that meet the definition of “hydraulic project” and are in or near state waters. See, e.g., <http://wdfw.wa.gov/licensing/hpa> (last visited May 31, 2016) (HPA website) (“Since 1943, anyone planning certain construction projects or activities in or near state waters has been required to obtain . . . an HPA.”); Unsworth Opinion Request Letter at 1 (explaining that “WDFW has required project proponents to apply for an HPA for . . . those projects that will be located landward of the [ordinary high water line] and immediately adjacent to waters of the state”).

Second, a project is less likely to meet the statutory criteria of a “hydraulic project” the farther it is from a water body. This is so for at least three reasons:

- (1) Impacts generally diminish over distance, so a project is less likely to “use, divert, obstruct, or change the natural flow or bed of” a water body the farther the project is from the water. RCW 77.55.011(11).
- (2) For the same reason, a project far from the water is also less likely to affect fish life, which is the concern motivating HPA review; protection of fish life is the sole basis on which WDFW can condition or deny a permit. See RCW 77.55.231, .021(7) (a).
- (3) The statutory examples of work above the ordinary high water line that WDFW explicitly regulates are generally very near a water body. See, e.g., RCW 77.55.021(9)-(15) (“stream bank stabilization”); RCW 77.55.131 (dikes); RCW 77.55.141 (bulkheads); RCW 77.55.151 (marinas and boat ramps); see also, e.g., *In re Bankruptcy Petition of Wieber*, 182 Wn.2d 919, 926, 347 P.3d 41 (2015) (looking to a statutory scheme as a whole in order to determine the reach of a statute).

Thus, it would be very difficult for WDFW to assert authority over a project far removed from state waters.

Such limits to WDFW's authority, however, give no basis to draw an arbitrary line beyond which WDFW lacks authority. Whether a given type of project is too far from a waterway to be subject to HPA review depends on the facts of the particular situation. The question of whether a particular project can change the bed or flow to the extent of affecting fish life involves technical expertise. A court accords an agency's interpretation of law great weight

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where the statute is within the agency's special expertise. *Cornelius*, 182 Wn.2d at 585. WDFW has such expertise: it is the agency charged with enforcement of an HPA permit; its review is limited to protection of fish life; and the conditions WDFW imposes on the permit must be reasonably related to the project. RCW 77.55.021(1), .021(7)(a), .231. Accordingly, we believe that courts would be somewhat deferential to WDFW's conclusions as to whether a particular project or type of project meets the statutory standard for requiring an HPA permit. We note that WDFW has provided notice in WAC 220-660 about certain work that is subject to an HPA requirement.[\[4\]](#)

In summary, we conclude that WDFW's HPA authority is not limited to activities at or below the ordinary high water line. WDFW is justified in exercising HPA authority on any activity that complies with the statutory definition of a "hydraulic project," regardless of whether the activity is above or below ordinary high water lines. While drawing a fixed upland boundary to WDFW's HPA authority is impossible, that authority clearly diminishes the farther a project is from the water.

We trust that the foregoing will be useful to you.

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[attachments](#)

[1] Though the definition of hydraulic project uses “salt or freshwaters of the state” instead of “waters of the state,” the reference to “salt and freshwaters” in the definition of “waters of the state” indicates its applicability to the term used in the definition of hydraulic project.

[2] In re Denial of an Hydraulic Project Approval to Young, No. AH-97-106 (Wash. Dep’t of Fish and Wildlife Apr. 30, 1997) (Initial Order) (attached). Also attached as part of this document is the September 11, 1997, Decision Modifying Initial Order (Modifying Order).

[3] RCW 77.55.021(1) exempts four activities that meet the definition of a hydraulic project from the necessity of obtaining an HPA permit. Generally, each of the four activities—driving across an established ford; removing or controlling certain invasive plants; removing derelict fish, crab, and shellfish gear; and permitting under the forest practices act—must comply with certain separate statutory requirements in order to qualify for the exemption. See RCW 77.55.021(1), .031, .051, .041, .361.

[4] Whether deference to WDFW’s expertise is appropriate in any particular case would depend on the circumstances. Deference to WDFW’s interpretation of this statute would be particularly strong where it acts by rule to address particular categories of work. See, e.g., WAC 220-660-190 (addressing water crossing structures), -270 (utility crossings in freshwater). Adopted rules are presumed valid (RCW 34.05.570(1)) and, in this context, those rules both provide notice to the regulated public that the project requires an HPA permit and memorialize the agency’s technical expertise in applying the HPA statute to the particular subject.

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