SENATE BILL REPORT
SB 5509

As of January 29, 2023

Title: An act relating to the creation of the Washington state public infrastructure bank.

Brief Description: Creating the Washington state public infrastructure bank.

Sponsors: Senators Kuderer, Lovelett, Conway, Dhingra, Hasegawa, Hunt, Liias, Nguyen, Nobles, Saldaña, Stanford, Trudeau, Wellman and Wilson, C..

Brief History:
Committee Activity: Business, Financial Services, Gaming & Trade: 1/31/23.

Brief Summary of Bill

- Provides authority to the state to activate a State Public Infrastructure Bank with a cooperative membership organization to lend to local and tribal governmental entities under certain conditions.
- Permits local and tribal governments, along with the state, to be members of the State Public Infrastructure Bank.
- Enables the State Public Infrastructure Bank to issue debt in the name of the bank rather than the state of Washington without creating state debt.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Clinton McCarthy (786-7319)

Background: Public Banking in the United States. A public bank is a bank, or a financial institution, in which a state, municipality, or public actors are the owners. As of 2021, the Bank Of North Dakota is the only state public bank in the United States. Under North Dakota state law, the bank is the State of North Dakota doing business as the Bank of North Dakota. The bank is the only legal depository for all state funds. The state and its agencies are required to place their funds in the bank, but local governments are not required to do

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so. Profits from the bank are either deposited in North Dakota's general fund, or are used to support economic development in the state. The bank is permitted to collateralize government deposits.

State Lending Programs for Local Governments. Washington has more than 80 programs and subprograms administered by 12 agencies that provide financial support to local governments in the state. Some of the larger examples include:

- Public Works Trust Program—provides planning, pre-construction, construction and emergency loans for local infrastructure improvements;
- Water Pollution Control Revolving Loan Program—provides low-interest loans for planning, design, acquisition and construction of water pollution control facilities and nonpoint source pollution control activities;
- Drinking Water State Revolving Fund —provides low-interest loans for public water systems to publicly owned—municipal—and privately owned drinking water systems statewide;
- Community Economic Revitalization Board—provides loans and grants to finance public infrastructure improvements that encourage new business development and expansion in areas seeking economic growth; and
- Housing Trust Fund—provides loans and grants for construction, acquisition, and rehabilitation of low-income multi-family and single-family housing.

Two programs provide local governments with access to capital via the municipal bond market through programs administered by the Office of the State Treasurer. The LOCAL Program allows Washington municipalities to finance essential real estate and equipment as either a financing contract or lease, also known as certificate of participation. While these certificates are issued by the state, the state's obligation is limited to the extent that the state is an obligor in the certificates; otherwise local governments participating in a specific contract are named as the obligor. The School Bond Guarantee Program was established in 1999, following a voter-approved constitutional amendment. School districts must apply to the Office of the State Treasurer and demonstrate that their general obligation bonds were approved by voters. The program provides a backup general obligation pledge to school district's bonds, providing a lower interest rate to the borrowing district.

Washington State Bank Business Plan. In the 2018 supplemental budget, the Legislature included a proviso for the Washington State Office of Financial Management to contract with an entity or entities with expertise in public finance, and commercial and public banking to evaluate the benefits and risks of establishing the bank, and to develop a business plan for its creation and launch. This report was transmitted to the Legislature in May 2020.

Summary of Bill: A state public infrastructure bank is established as a public body corporate and politic, and as an instrumentality of the state of Washington. The bank may be activated under the following conditions:

- an appropriation of some combination of state and federal funds is provided from the

state that is sufficient to allow the state to issue debt with a competitive rating;
- articles of activation are completed in a format approved by the State Finance Committee and filed with the Secretary of State; and
- a duplicate of the original articles of activation and additional information is filed with the Department of Financial Institutions (DFI).

The state, local governments, and federally recognized tribes are permitted to invest in the bank, and the articles of activation must be approved by each, the member local, or tribal governments, that become a member. The State Finance Committee is directed to approve an amount for an initial contribution by local and tribal governments. Five years after activation, the bank shall have a goal of providing 35 percent of the amount it lends on an annual basis to support housing in low to moderate-income areas. The state treasurer is authorized to reinvest balances that are more than sufficient to meet the current expenditures into the bank.

Operating Board Membership. The operating board consists of nine members including:
- five member-appointed directors selected by a majority of the members of the bank;
- three members appointed by the Governor and confirmed by the Senate; and
- the state treasurer serving as an ex-officio member.

One of the three public members appointed by the Governor shall be appointed as the chair of the board and serve at the pleasure of the Governor, with the initial chair having to serve a full four-year term. The state treasurer may designate an employee to act on their behalf. A majority of directors constitutes a quorum. Directors of the bank serve without compensation, but are entitled to reimbursement from the funds of the bank.

Powers of the Operating Board. The board has the authority to hire and fire an executive director. The board must approve the budget of the bank on an annual basis. The board is directed to establish an internal audit committee.

Employees of the Office of the State Treasurer (OST) will administer and operate the bank. The executive director is funded through the OST budget. The bank may consult with other state agencies at its discretion and without the approval of the Washington State Housing Finance Commission.

State Oversight of the State Public Infrastructure Bank. The State Finance Committee serves as the oversight board of the bank. The State Finance Committee may require independent audits, and is subject to audits by the state auditor. DFI may review the deposits and transactions of the bank.

Powers and Limitations on the State Public Infrastructure Bank. The bank is authorized to:
- sue and be sued in its own name;
- adopt and alter an official seal;
- establish rules to conduct its business;

- engage independent experts and enter into contracts the bank may find necessary to conduct its business;
- receive deposits from state, local, or tribal governments and invest the deposits in lawful funds;
- open and maintain accounts in qualified public depositaries in the Federal Reserve Bank of San Francisco, the National Cooperative Bank, a federal home loan bank, or any other federal financing entity;
- procure insurance;
- apply for and accept grants, loans, advances, and from any source of money, property, labor, or other things of value;
- borrow money and issue its bonds consistent and provide for and secure their payment;
- develop and conduct a program to make loans to borrowers for project costs of infrastructure and economic development projects;
- establish, revise, and collect member contributions and fees as the bank deems necessary;
- charge for its costs and services in review or consideration of a proposed loan to a local or tribal government regardless of whether a loan is made;
- make appropriate expenditures for paying administrative expenses;
- establish reserve funds;
- provide financial assistance and other forms of assistance to local or tribal governments;
- make distributions to members amounts that the board deems surplus to the needs of the bank, subject to a two-thirds majority of the board; and
- engage outside legal counsel.

The bank must not:

- constitute a bank or trust company within the jurisdiction under the control of DFI, the controller of the currency of the United States of America, or the United States Department of the Treasury; and
- constitute a bank, broker, or dealer in securities.

The bank is not a public depositary, and may not issue bonds in a manner that would create state debt.

Financing Powers of the State Public Infrastructure Bank. Bonds issued by the bank are not obligations of the state of Washington, and are only obligations of the bank. Such funds are not public moneys or funds of the state and at all times must be kept segregated and set apart from other funds. Obligations of the bank are not obligations of the state of Washington.

Bonds of the bank are subject to such terms, conditions, covenants, and protective provisions found necessary or desirable by the bank. Any bonds issued by the bank may be secured by a financing document between the bank and the purchasers or owners of the

bonds. The bank may purchase its bonds with any of its funds available for purchase, and purchase its bonds in the open market. Any issuance of bonds requires advance notice to the chair of the state finance committee.

The bank, the members, the directors or agents, nor bank employees are personally liable on bonds or subject to any personal liability or accountability. Any owner of bonds issued by the bank may become a purchaser at any foreclosure sale if the person is the highest bidder.

Depending on the contracts between the bank and its borrowers, the bank may modify the rate of interest, time, and payment of installment of principal.

Exemption from Disclosure. The following are exempt from disclosure:

- financial and commercial information supplied by businesses or individuals during the application for loans or program services and records; and
- examination reports and information obtained by DFI from banks, savings and loans, and credit unions.

Appropriation: None.

Fiscal Note: Requested on January 23, 2023.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.