SENATE BILL REPORT
SB 5955

As of January 21, 2014

Title: An act relating to establishing the Washington publicly owned trust in order to create a financing infrastructure to implement Initiative Measure No. 502 that complies with the United States attorney general's guidance letter of August 29, 2013, thereby providing resources for public infrastructure and other public purposes

Brief Description: Establishing the Washington publicly owned trust in order to create a financing infrastructure to implement Initiative Measure No. 502 that complies with the United States attorney general's guidance letter of August 29, 2013, thereby providing resources for public infrastructure and other public purposes.

Sponsors: Senators Hasegawa, Chase, Keiser, Conway, Frockt, Kline and Kohl-Welles.

Brief History:
Committee Activity: Financial Institutions, Housing & Insurance: 1/16/14.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

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Background: The 2007 recession severely impacted local economies across the United States. In response, various states have considered operating state-owned financial institutions as a means to provide needed capital resources to their local economies. The Bank of North Dakota (BND), the sole state-owned bank in the nation, provides the model that these states are examining for possible adoption. Established in 1919 with initial capitalization of $2 million, BND operates as a banker's bank by partnering to loan money to farmers, schools, and small businesses, and by purchasing municipal bonds from public institutions. Currently, BND operates with an excess of $270 million in capital and, over the past decade, returned an annual average of $29.4 million to the state's general fund.

The Department of Financial Institutions (DFI) is the agency responsible for monitoring and regulating financial institutions operating in Washington State. To legally operate as a bank in the state, a financial institution must either be state or federally chartered. In addition to being chartered, banks must acquire and maintain deposit insurance from the Federal Deposit Insurance Corporation (FDIC) to protect deposits from potential bank failure. Examination reports obtained by DFI from financial institutions are confidential and exempt from public disclosure.

In 2012, Initiative 502 (I-502) was voted into law. I-502 decriminalizes the use of recreational marijuana under Washington State law and, similar to the state's liquor controls, allows the creation of a licensed and regulated system of marijuana production and distribution. Marijuana retail stores are scheduled to begin public operation in the spring of 2014.

The production, distribution, and use of marijuana remain classified as illegal under the federal Controlled Substance Act. In August 2013, however, the U.S. Department of Justice (DOJ) updated its federal marijuana enforcement policy in light of Washington's I-502 and Colorado's Amendment 64. In pertinent part, the DOJ memorandum states: "The Department expects these states to establish strict regulatory schemes that protect the eight federal interests identified in the Department's guidance. These schemes must be tough in practice, not just on paper, and include strong, state-based enforcement efforts backed by adequate funding. Based on assurances that those states will impose an appropriately strict regulatory system, the Department has informed the governors of both states that it is deferring its right to challenge their legalization laws at this time. But if any of the stated harms do materialize—either despite a strict regulatory scheme or because of the lack of one—federal prosecutors will act aggressively to bring individual prosecutions focused on federal enforcement priorities and the Department may challenge the regulatory schemes themselves in these states."

The DOJ memorandum did not address the banking of marijuana revenues. It is, therefore, still illegal under federal law for financial institutions to transact business utilizing monies originating from marijuana proceeds.

Summary of Bill: The Washington Publicly Owned Trust (Trust) is established as a new executive agency. The purposes of the Trust are to: (1) invest in and finance infrastructure systems that will increase public health, safety, and quality of life; (2) improve environmental conditions and promote community vitality and economic growth; and (3) leverage receipts from marijuana sales and from public resources, and work collaboratively with financial institutions, community-based organizations, economic development organizations, guaranty agencies, and other stakeholder groups.

<u>Washington Investment Trust Commission (Commission).</u> Effective immediately upon passage of the enabling legislation, the Commission commences its duties. The Commission is comprised of the Governor, Lieutenant Governor, Secretary of State, Attorney General, and Superintendent of Public Instruction. Responsibilities of the Commission include adopting rules regarding safety and soundness standards of the Trust and other topics as needed for efficient administration of the Trust, and beginning Trust operations by July 1, 2015. The Commission may delegate duties and powers necessary to carry on the Trust's business to the Trust President, but may not delegate rule-making or policy-making authority. The Commission may also establish technical and advisory committees and consult with experts.

<u>Organizing Committee.</u> The organizing committee is established and is comprised of two senators, one from each caucus; two representatives, one from each caucus; and seven citizen members with a background in finance. The President of the Senate and the Speaker of the House jointly select the chair of the organizing committee from among the citizen

membership. The chair must convene the first meeting within 45 days of the bill's effective date. The organizing committee may appoint an interim president and other staff and may contract with people who have technical expertise.

The organizing committee must make recommendations to the Commission regarding a start-up business plan for the Trust that includes plans and timelines for functions that are new and functions transitioning to the Trust that were previously performed by another entity; initial capital requirements of the Trust; options for capitalizing the Trust, including federal transportation funds, Taft-Hartley trust funds, revenue bond proceeds, state reserves, and other core capital reserves not needed for liquidity; and other items requested by the Commission.

Management and Advisory Board. The Commission must appoint a Trust President. The President may hire employees and contract with people who have technical expertise. The advisory board reviews the Trust's operations and makes recommendations relating to the Trust's management, services, policies, and procedures. The advisory board consists of 11 members appointed by the Governor and confirmed by the Senate. The members must represent a diversity of experience relevant to activities of the Trust, and six members must have expertise in finance. Members serve a three-year term at the discretion of the Governor.

Deposit of Funds. The Trust may accept deposits from marijuana producers, marijuana processors, and marijuana retailers; it may also accept funds from any state or local public source.

All deposits in the Trust are guaranteed by the state rather than insured by the FDIC. All income earned by the Trust on state monies that are deposited in or invested with the Trust constitute income of the Trust and must be credited to the Trust except as otherwise required by law. Administrative and strategic planning expenses of the Trust are funded from its earnings—subject to legislative authorization—and from any other appropriations provided by the Legislature.

The Commission must establish a separate administrative account within the Trust from which its administrative and strategic planning costs must be funded. In each biennial operating budget, the Legislature must authorize the Commission to incur a maximum expenditure from the administrative account.

In an amount not to exceed the authorized expenditures, the Commission must proportionally allocate interest earnings from accounts and monies under its management and transfer this amount to the administrative fund. This transfer must precede the distribution of remaining earnings under applicable statutes.

Investments by the Trust. The Trust is authorized to invest all monies deposited in the trust.

Federal Reserve System. The Trust is authorized to become a member of the Federal Reserve system.

Public Purpose Funding. The Trust is authorized to manage and invest state monies in order to facilitate investment in and financing of construction, rehabilitation, replacement, and improvement of new and existing public infrastructure systems. By November 1, 2014, the Commission must present an implementation plan with any necessary legislation to the Governor and legislative committees that demonstrates how the trust plans to maximize revenues and public benefit.

Financial Oversight and Audit. The Trust must maintain capital adequacy and other standard indicators of safety and soundness monitored by DFI. The Director of DFI must examine the Trust, taking into consideration the unique circumstances of a publicly owned financial institution.

The State Auditor must conduct an annual audit of the Trust's accounts and financial transactions.

Reporting Requirements. The Trust must submit quarterly reports to the Commission. By December 1 of each year, the Commission must make a report to the Legislature on the affairs of the Trust.

Capitalization. The treasurer must deposit all monies received by the state Liquor Control Board from marijuana-related activities into the Trust. Non-dedicated funds may be used by the Commission for capitalization of the trust.

Public Disclosure. The following documents are exempt from public disclosure: financial and commercial information and records supplied by businesses or individuals during application for loans or program services; and examination reports and information obtained by DFI from the Trust.

Other Provisions. The Trust may not make a loan to an Advisory Board member, the President, or employees. Advisory board members, the President, and employees must follow the state Ethics Act. The Trust may be called a trust and may provide banking services without being called a bank. The Trust is exempt from all fees and taxes levied by the state or its subdivisions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains an emergency clause and takes effect immediately.