**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

# Education Committee

# SSB 5181

**Brief Description:** Providing school districts serving low-income communities with flexibility in financing their facilities.

**Sponsors:** Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Honeyford and King).

**Brief Summary of Substitute Bill**

- Authorizes school districts to create partnerships and limited liability companies, and enter into leases, loans, and other agreements with public or private entities for the purpose of financing school facilities through certain federal tax credit programs.
- Excludes school district indebtedness related to a district's financing of school facilities through certain federal tax credit programs from indebtedness limitations prescribed in statute.

**Hearing Date:** 3/12/21

**Staff:** Ethan Moreno (786-7386).

**Background:**

School Districts.
School districts are corporate bodies and possess the usual powers of public corporations, including the authority to transact all business necessary for maintaining schools and protecting the rights of districts, and enter into contractual obligations, and the ability to sue and be sued.

School district boards of directors (school boards) have exclusive control of all property, both real and personal, belonging to the district. School boards, subject to applicable provisions, may purchase, lease, receive, and hold property in the name of the district, and rent, lease, or sell district property.

School boards may also rent, lease, or permit the occasional use of surplus real property owned or lawfully held by the district to any person, corporation, or government entity for profit, nonprofit, commercial, or noncommercial purposes. The leasing, renting, or use of the property, which must comply with applicable public notice requirements, must be in accordance with an adopted district policy governing the use of surplus property and may not interfere with the conduct of educational programs and related activities. Moneys derived from the lease, rental, or occasional use of surplus property must be deposited into specific district funds as prescribed in statute.

School districts have access to various state and local moneys for financing school facilities. For example, school boards may borrow money and issue bonds for capital purposes, including purchasing sites for needed structures, constructing buildings, and completing structural changes and additions to buildings and facilities.

Absent voter approval, school district indebtedness is limited to .375 percent of the value of the taxable property in the district. With voter approval, the limit can be extended to 2.5 percent of the value of the taxable property in the district.

<u>New Markets Tax Credit Program</u>.
The Community Development Financial Institutions (CDFI) Fund was created by the federal government in 1994 to expand economic opportunity for underserved people and communities.

The CDFI Fund invests in Community Development Entities (CDEs) and other entities through various programs, including the New Markets Tax Credit (NMTC) Program. The NMTC Program allows individual and corporate investors to receive a tax credit against their federal income tax in exchange for making equity investments into CDEs. The CDEs are corporations or partnerships that serve as financial intermediaries in the NMTC Program. Using capital from investors, the CDEs make loans and investments to businesses operating in qualifying low-income communities, providing better rates and terms than the market. In exchange, the CDEs receive a tax credit of 39 percent of the original amount invested in the CDE over a seven-year period.

<u>Federal Rehabilitation Tax Credit Program</u>.
The federal Rehabilitation Tax Credit (RTC) Program allows property owners to receive, during a five-year period, a 20 percent tax credit for rehabilitation expenditures incurred by the owner for the rehabilitation of qualifying historic structures.

**Summary of Substitute Bill:**

<u>School District Use of Federal Tax Credit Programs for Facility Financing</u>.
School districts may create partnerships and limited liability companies, and enter into leases,

loans, and other agreements with public or private entities, to finance school facilities within their boundaries using:

- the NMTC Program;
- the RTC Program; and
- any other similar federal tax credit program.

Construction contracts financed through the federal tax credit programs must comply with all state laws and rules applicable to public school construction projects, including, but not limited to:

- public bidding of construction contracts;
- payment of prevailing wages; and
- energy efficiency and clean building requirements.

Prior to closing on any financing through the federal tax credit programs, the school board must approve the financing. Additionally, the closing documents must be accompanied by an attorney's attestation that:

- the financing complies with applicable statutory and state constitutional requirements;
- the school district is empowered to execute the financing and closing documents; and
- the financing and closing documents are enforceable by their terms.

Provisions governing school district powers with respect to surplus property and long-term building rental and lease agreements are modified to specify that the applicable provisions do not preclude school boards from leasing, for the term required by the financing, or otherwise transferring or encumbering real property, provided fee simple title is retained by the school district, in order to participate in:

- the NMTC Program;
- the RTC Program; or
- any other similar federal tax credit program.

<u>Exemption from Indebtedness Limitations</u>.

Provisions limiting school district indebtedness are modified to specify that the limitations do not apply to any lease, sublease, lease-purchase, or similar agreement affecting any real or personal property owned by a district and directly related to a school district's participation in:

- the NMTC Program;
- the RTC Program; or
- any other similar federal tax credit program.

Any computation of indebtedness required by debt limitation provisions must exclude the amount of any lease, lease-purchase, or similar agreement related to the authorization to use the federal tax credit programs.

<u>Administrative Rules</u>.

The Office of the Superintendent of Public Instruction is required to promptly amend any rules that are incompatible with the authorized use of the federal tax credit programs for the financing of school district facilities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.