SENATE BILL REPORT
SSB 5181

As of Third Reading

Title: An act relating to providing school districts serving low-income communities with flexibility in financing their facilities.

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 History:
Committee Activity: Early Learning & K-12 Education: 1/29/21, 2/08/21 [DPS].

Brief Summary of First Substitute Bill

- Allows school districts to create partnerships and limited liability companies, and enter into leases, loans, and other agreements with public and private entities, for the purpose of utilizing certain federal tax credit programs to finance school facilities.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 5181 be substituted therefor, and the substitute bill do pass.
Signed by Senators Wellman, Chair; Nobles, Vice Chair, K-12; Wilson, C., Vice Chair, Early Learning; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

Staff: Alexandra Fairfortune (786-7416)

Background: School District Powers. School districts are corporate bodies and possess the usual powers of a public corporation, including the ability to transact business necessary

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for maintaining schools, protecting the rights of the district, and entering into such obligations that are authorized by law. The school board of directors has broad discretionary power to adopt written policies that provide for the development and implementation of programs, activities, services, or practices that will promote the education and daily physical activity of K-12 students and promote the management and operation of the school district. The school board of directors may also contract with other entities, including public or private organizations, to implement the board's powers and duties.

School board directors are also authorized to rent, lease, or permit the occasional use of surplus real property owned or held by the district, so long as it is for a lawful purpose and the property can be recaptured should it be needed for school purposes.

School districts are limited to an indebtedness amount of 0.375 percent of the value of the taxable property within the district without seeking voter approval. With the approval of at least 60 percent of district voters, the indebtedness limit may be increased up to 2.5 percent of the value of the taxable property within the district.

Federal Tax Credits. The New Markets Tax Credit Program is a federal tax credit program that permits individual and corporate investors to receive a tax credit against their federal income tax in exchange for making equity investments in community development entities (CDEs). Using the capital from these equity investments, CDEs can make loans and investments to businesses operating in low-income communities on better rates and terms and more flexible features than the market.

The Rehabilitation Tax Credit Program is a federal tax credit program that provides a 20 percent tax credit claimed over five years for qualified rehabilitation expenditures to certified historic structures.

Summary of First Substitute Bill: School districts are authorized 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 utilizing the federal New Markets Tax Credit Program, the federal Rehabilitation Tax Credit Program, or similar federal tax credit programs. Any construction contracts financed under this authority must comply with all state laws and rules applicable to any other public school construction project including, but not limited to:
- public bidding of construction contracts;
- payment of prevailing wage;
- apprenticeship requirements;
- energy efficiency and clean building requirements; and
- health and safety requirements.

The school board must approve the financing prior to closing. The closing documents must be accompanied by an attorney's attestation that the financing complies with applicable state laws and the state constitution, that the school district is empowered to execute the financing and closing documents, and the financing and closing documents are enforceable by their terms.

This authority is supplemental to existing school district authority, and any previous actions consistent with this authority are ratified and confirmed. Existing statutes authorizing the rental, lease, or use of district property do not preclude school board directors from leasing, transferring, or encumbering real property to participate in such federal tax credit programs, provided fee simple title is retained by the school district.

Current law limiting indebtedness is not applicable to any lease, sublease, lease-purchase, or similar agreement affecting real or personal property owned by a district and directly related to a district's participation in the federal New Markets Tax Credit Program, the federal Rehabilitation Tax Credit Program, or similar federal tax credit programs. Any computation of indebtedness must exclude the amount of such agreements.

The Office of the Superintendent of Public Instruction must amend any existing rules that are incompatible with the bill provisions.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This idea originally came from Mt. Adams School District in the middle of the Yakima Reservation. The district is the second largest in Washington by land mass, but is tax poor because the majority of land is federally impacted. They applied for New Market Tax Credit (NMTC) funding but due to limitations in state statute they had to return it. School construction is funded through limited state bonds, declining trust revenue, and local bonds that are difficult to pass. The NMTC is an untapped revenue source for tax poor districts that have exhausted all other options, and it does not involve debt or local taxes. It is critically important to small, rural, and low income communities, especially communities of color. This has been used in other states, and should be used in Washington. The funding helps meet the unique needs of each community, including those communities where wealth has not been equally distributed. Under this program, the title to the land never transfers.

OTHER: This bill creates a bandaid approach to school construction funding. Instead, the state needs systemic reform to help communities build safe, modern, and healthy facilities. The super majority needed to pass bonds should be amended to a simple majority and the

School Construction Assistance Program should be fully funded to match the actual cost to districts. This is an unfamiliar funding method that could result in unforeseen consequences, such as transferring the title of district property to a nonprofit. School districts would be entering into loans not secured by the state.

Persons Testifying: PRO: Senator Jim Honeyford, Prime Sponsor; Curtis Guaglianone, Mt. Adams School District; Brian Sims, Washington State School Directors Association; Linda Moore; Sara Pietka, Roeder and Company, LLC; Michael Moore, Michael Moore Consulting; Kevin Chase, Educational Service District 105.

OTHER: Tyler Muench, Office of the Superintendent of Public Instruction; Lorrell Noahr, Washington Education Association.

Persons Signed In To Testify But Not Testifying: No one.