
Consumer Protection & Business Committee

E2SSB 5188

Brief Description: Concerning creation of the Washington state public financial cooperative.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Nguyen, Conway, Darneille, Das, Dhingra, Hasegawa, Hunt, Liias, Lovelett, Stanford, Van De Wege, Wellman and Wilson, C.).

<p>Brief Summary of Engrossed Second Substitute Bill</p> <ul style="list-style-type: none">• Authorizes a public financial cooperative as a membership organization to lend to local and tribal governmental entities.

Hearing Date: 3/17/21

Staff: Serena Dolly (786-7150).

Background:

Public Banking in the United States.

A public bank is a financial institution owned by one or more public entities. Currently, the Bank of North Dakota (the Bank) is the only state public bank in the United States. The Bank is the only legal depository for all state funds, and the state and its agencies are required to place their funds in the Bank. Local governments may, but are not required to, deposit funds in the Bank. The Bank's deposits are guaranteed by the full faith and credit of the state. The Bank is permitted to collateralize government deposits. The Bank also administers infrastructure loan programs, provides products and services to other financial institutions, and offers a limited number of services directly to the public. Profits from the Bank are deposited in North Dakota's general fund or are used to support economic development in the state.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 are listed below:

- The Public Works Assistance Account provides planning, pre-construction, construction, and emergency loans for local infrastructure improvements.
- The Water Pollution Control Revolving Loan Fund provides low-interest loans for planning, design, acquisition and construction of water pollution control facilities and nonpoint source pollution control activities.
- The Drinking Water State Revolving Fund provides low-interest loans for public water systems to publicly owned and privately owned drinking water systems statewide.
- The 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.
- The Housing Trust Fund provides loans and grants for construction, acquisition, and rehabilitation of low-income multi-family and single-family housing.

The Office of the State Treasurer administers two programs that provide local governments with access to capital through the municipal bond market. The LOCAL Program allows Washington municipalities to finance essential real estate and equipment through a lease agreement, also known as a 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 provides a backup general obligation pledge to school districts' bonds, providing a lower interest rate to the borrowing district.

Washington State Bank Business Plan.

In the 2018 supplemental budget, the Legislature provided funding for the Washington State Office of Financial Management (OFM) to contract with an entity or entities with expertise in public finance and banking to evaluate the benefits and risks of establishing a state bank and to develop a business plan for its creation and launch. The OFM contracted with the University of Washington's Daniel J. Evans School of Public Policy and Governance to complete the evaluation. This report was submitted to the Legislature in May 2020.

Summary of Engrossed Second Substitute Bill:

Establishment and Activation of the Public Financial Cooperative.

The Washington State Public Financial Cooperative (cooperative) is established as a public body and instrumentality of the state. The cooperative is activated when:

1. the State Treasurer completes a study that provides recommendations on staffing and operational needs for the cooperative to be administered by the Washington State Housing Finance Commission (WSHFC);
2. a state appropriation sufficient to allow the cooperative to issue debt with a competitive rating is provided; and

3. executed articles of activation are filed with the Secretary of State in a form approved by the State Finance Committee.

Local governments and federally recognized tribes are permitted to invest in the cooperative. Each local or tribal government member must approve the articles of activation and provide a contribution to the cooperative in an amount approved the State Finance Committee. Beginning five years after activation, the cooperative must have a goal of providing 35 percent of the amount it annually lends to support housing in low to moderate- income areas.

Operating Board and Staffing.

The cooperative's operating board (board) consists of the following nine members:

- five elected local or tribal officials, to be selected by the members of the cooperative;
- three state residents appointed by the Governor; and
- the State Treasurer, or a designated employee, serving as an ex-officio member.

The Governor shall appoint the chair from one of the three public members of the board. Board members serve staggered four-year terms. Board members serve without compensation but are entitled to reimbursement for expenses from the funds of the cooperative. The board must approve the cooperative's annual budget and establish an internal audit committee.

The board has the authority to hire and fire an executive director, who is funded through the WSHFC budget. The executive director and employees of the WSHFC will administer and operate the cooperative. The cooperative may consult with other state agencies at its discretion and without the approval of the WSHFC.

Oversight of the Cooperative.

The State Finance Committee serves as the oversight board of the cooperative and may require independent audits of the cooperative. The cooperative also is subject to audit by the State Auditor, and the Department of Financial Institutions (DFI) may review the funds, accounts, and transactions of the cooperative.

Powers and Limitations on the Cooperative.

The cooperative may:

- sue and be sued in its own name;
- adopt and alter an official seal;
- establish rules to conduct its business;
- engage independent consultants, attorneys, and advisers;
- contract with federal, state, local, and tribal governmental entities for services;
- acquire, hold, use, and dispose of real and personal property, income, revenues, funds, and money;
- receive and invest funds from state, local, or tribal governments;
- open and maintain accounts in qualified public depositories;
- procure insurance;
- apply for and accept grants, loans, advances, and contributions;

- borrow money and issue bonds;
- develop and conduct a loan program for local and tribal governments to facilitate the financing of infrastructure and economic development projects;
- establish program guidelines, membership contributions, and other fees and charges;
- make expenditures for paying administrative costs;
- establish reserve funds;
- provide financial and other assistance to state, local, or tribal governments; and
- distribute surplus funds to members, when authorized by two-thirds of the board.

The cooperative may not:

- issue bonds that would create state debt;
- serve as a public depository;
- constitute a bank or trust company within the jurisdiction or under the control of the DFI, the comptroller of the currency of the United States, or the United States Department of the Treasury; or
- constitute a bank, broker, or dealer in securities.

Financing Powers of the Cooperative.

Bonds issued by the cooperative are not obligations of the state, may not create state debt, and are only obligations of the cooperative. Funds created for bond repayment are not public moneys or funds of the state and must be segregated and set apart from other funds.

Bonds of the cooperative are subject to terms, conditions, covenants, and protective provisions as are found necessary or desirable by the cooperative. Any bonds issued may be secured by a financing document between the cooperative and the purchasers or owners of the bonds. The cooperative may purchase its bonds with any of its funds available and purchase its bonds in the open market. Any issuance of bonds requires advance notice to the State Treasurer as chair of the State Finance Committee.

The cooperative and its members, directors, and employees are not personally liable on bonds or subject to any personal liability or accountability. Any owner of bonds issued by the cooperative may become a purchaser at any foreclosure sale if the person is the highest bidder.

Depending on the contracts between the cooperative and its borrowers, the cooperative 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 and records supplied by businesses or individuals during the application for loans or program services; and
- examination reports and information obtained by the DFI.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 10, relating to public disclosure, which takes effect January 1, 2022.