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**SUBSTITUTE SENATE BILL 5181**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Honeyford and King)

READ FIRST TIME 02/09/21.

1 AN ACT Relating to providing school districts serving low-income  
2 communities with flexibility in financing their facilities; adding a  
3 new section to chapter 28A.320 RCW; adding a new section to chapter  
4 28A.335 RCW; adding a new section to chapter 39.36 RCW; and creating  
5 new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The purpose of this act is to assist in  
8 the financing of school district facilities by clarifying how school  
9 districts may fully participate in the federal new markets tax  
10 credit, federal rehabilitation tax credit program, and similar  
11 federal tax credit programs.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.320  
13 RCW to read as follows:

14 (1) School districts may create partnerships and limited  
15 liability companies, and enter into leases, loans, and other  
16 agreements with public or private entities, including partnership  
17 agreements and limited liability company agreements, to finance  
18 school facilities within their boundaries utilizing: (1) The federal  
19 new markets tax credit program under 26 U.S.C. Sec. 45D or its  
20 successor statute; (2) the federal rehabilitation tax credit program

1 under 26 U.S.C. Sec. 47 or its successor statute; and (3) any other  
2 similar federal tax credit program.

3 (2) Any construction contracts financed under this section must  
4 comply with all state laws and rules applicable to any other public  
5 school construction project, including, but not limited to:

6 (a) Public bidding of construction contracts;

7 (b) Payment of prevailing wages;

8 (c) Apprenticeship requirements;

9 (d) Energy efficiency and clean building requirements; and

10 (e) Health and safety requirements.

11 (3) Prior to closing on any financing under this section, the  
12 school board must approve the financing, and the closing documents  
13 must be accompanied by an attorney's attestation to the following:

14 (a) The financing complies with the provisions of this act, the  
15 Washington state Constitution, and applicable state law;

16 (b) The school district is empowered to execute the financing and  
17 closing documents; and

18 (c) The financing and closing documents are enforceable by their  
19 terms.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.335  
21 RCW to read as follows:

22 Nothing in RCW 28A.335.170 or 28A.335.040 through 28A.335.070  
23 precludes school district boards of directors from leasing for the  
24 term required by the financing or otherwise transferring or  
25 encumbering real property, provided fee simple title is retained by  
26 the school district, in order to participate in: (1) The federal new  
27 markets tax credit program under 26 U.S.C. Sec. 45D or its successor  
28 statute; (2) the federal rehabilitation tax credit program under 26  
29 U.S.C. Sec. 47 or its successor statute; or (3) any other similar  
30 federal tax credit program.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.36  
32 RCW to read as follows:

33 (1) This chapter does not apply to any lease, sublease, lease-  
34 purchase, or similar agreement affecting any real or personal  
35 property owned by a district and directly related to a school  
36 district's participation in: (1) The federal new markets tax credit  
37 program under 26 U.S.C. Sec. 45D or its successor statute; (2) the

1 federal rehabilitation tax credit program under 26 U.S.C. Sec. 47 or  
2 its successor statute; or (3) similar federal tax credit programs.

3 (2) Any computation of indebtedness under this chapter shall  
4 exclude the amount of any such lease, lease-purchase, or similar  
5 agreement described under subsection (1) of this section.

6 NEW SECTION. **Sec. 5.** The authority granted by this act is  
7 additional and supplemental to any other authority of any school  
8 district. This act may not be construed to imply that any of the  
9 power or authority granted in this act was not available to any  
10 school district under prior law. Any previous actions consistent with  
11 this act are ratified and confirmed.

12 NEW SECTION. **Sec. 6.** The office of the superintendent of public  
13 instruction must promptly amend any existing rules that are  
14 incompatible with the provisions and intent of this act.

15 NEW SECTION. **Sec. 7.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

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