

---

## OLR Bill Analysis

sSB 70 (File 255, as amended by Senate "A," "B," and "D")\*

### ***AN ACT ESTABLISHING THE CONNECTICUT INFRASTRUCTURE BANK.***

#### **SUMMARY**

This bill establishes the Connecticut Infrastructure Bank as a quasi-public agency and within the bank, the Infrastructure Improvement Fund. The bank may use the fund to invest in and financially support "infrastructure improvement," which the bill defines as the acquisition, removal, construction, equipping, reconstruction, repair, rehabilitation, and improvement of easements and rights-of-way to roadways, highways, bridges, commuter and freight railways, transit and intermodal systems, airports and aeronautic facilities, ports, harbors, navigable waterways, energy transmission and distribution resources, and transit oriented development.

The bill requires the bank, in consultation with the treasurer and transportation commissioners, to develop a comprehensive plan to:

1. expedite the development, structuring, and execution of high-quality, cost-efficient infrastructure improvement projects;
2. support financing or other expenditures that promote investment in infrastructure improvement projects; and
3. prioritize infrastructure improvement projects that will stimulate and encourage state economic growth and development.

Under the bill, the bank may charge fees for the use of, and services furnished to, projects it funds. It may also charge fees for providing financing.

The Infrastructure Bank has many of the same powers and

authorities existing law extends to other quasi-public agencies, including the authority to finance certain infrastructure projects, issue bonds, hire employees, establish subsidiaries, and contract with vendors. The Infrastructure Bank is governed by a board of directors and is established once the board passes a resolution adopting the bank's purposes.

The bill prohibits the bank, without the treasurer's and transportation commissioner's approval, from applying for federal grant eligibility for grants covering matters under the jurisdiction of the Department of Transportation, the Connecticut Port Authority, or the Connecticut Airport Authority.

The bill also makes conforming changes to the statutes governing quasi-public agencies (§§ 3-6).

\*Senate Amendment "A", among other things, (1) requires the bank to consult with the treasurer and transportation commissioners to develop its plan; (2) prohibits the bank from applying for certain federal grants without their approval; (3) makes the bank an independent quasi-public agency, instead of placing it within the Connecticut Green Bank; (4) removes the Infrastructure Bank's authority to issue bonds backed by a special capital reserve fund; and (5) adds the Freedom of Information Act provisions.

\*Senate Amendment "B" removes provisions in the underlying bill exempting the bank from (1) physically delivering a record of liens or pledges and (2) recording agreements or leases (e.g., liens) except with the bank itself.

\*Senate Amendment "D" specifies the bank's auditors must be independent and have no interest in it.

EFFECTIVE DATE: October 1, 2019

## **§ 1 — CONNECTICUT INFRASTRUCTURE BANK**

The bill establishes the Connecticut Infrastructure Bank as a quasi-public agency. In doing so, it makes the bank a public instrumentality

and political subdivision of the state, created to perform an essential public and governmental function, and thus subject to statutory procedural, operating, audit, and reporting requirements for quasi-public agencies, including lobbying restrictions and an ethics code. The bank is not a state department, institution, or agency.

In establishing the bank as a quasi-public agency, the bill imposes the same statutory requirements that apply to the state's other quasi-public agencies. It generally indemnifies the bank's directors, officers, employees, and their agents and requires the treasurer's approval before borrowing money or issuing bonds or notes that are guaranteed or contributed to by the state.

***Powers and Authorities***

The bill specifies that (1) the bank's powers specified in statute must be interpreted broadly to effectuate its purposes and not be construed to limit its powers and (2) if any provision of the Infrastructure Bank's statutes is inconsistent with any other state laws or special acts, the bank's statutes must be deemed controlling. It authorizes the bank to do the following to fulfill its purposes:

1. have perpetual succession as a corporate body and adopt bylaws, policies, and procedures to regulate its affairs and business conduct;
2. make and enter into all contracts and agreements needed or incidental to conduct its business;
3. invest in, acquire, lease, purchase, own, manage, hold, sell, and dispose of real or personal property or any interest in it;
4. borrow money or guarantee a return to investors or lenders;
5. hold patents, copyrights, trademarks, marketing rights, licenses, or other intellectual property rights;
6. invest funds that are not needed for immediate use or disbursement under investment policies the bank's board of

directors adopts;

7. procure property or business insurance against any loss or liability in such types and amounts and from such insurers as it deems desirable;
8. enter into a memorandum of understanding or other arrangements with the Connecticut Green Bank to share space, office systems, or administrative support staff; and
9. do anything else necessary or convenient to carry out the bank's purposes.

The bill also allows the Infrastructure Bank to employ any staff that it needs or wants, provided that such employees are not state employees and the bank is not an employer under the state employee collective bargaining law. The bank may establish personnel practices and policies, including those related to hiring, promotion, compensation, and retirement. It may also engage consultants, attorneys, financial advisers, appraisers, and other professionals.

The bill allows the bank to enter into joint ventures and invest in and participate with any person, including government entities and private corporations, to form, own, manage, and operate (1) a northeast regional infrastructure bank or (2) any other business entities formed to advance the bank's purposes, including stock and nonstock corporations, limited liability companies (LLCs), and general or limited partnerships. If the bank's officers, employees, or directors serve as the business entity's officers, members, or directors, their service is deemed to be in the discharge of their bank duties or within the scope of their bank employment as long as they do not receive any compensation or financial benefit from the business entity.

Additionally, the bank may consult with, and provide project finance expertise to, any state or quasi-public agency for an infrastructure improvement project.

### ***Subsidiaries***

The bill allows the Infrastructure Bank to (1) form subsidiaries to carry out the bank's purposes and (2) transfer money or property of any kind to them. The subsidiaries may be organized as stock or nonstock corporations or LLCs. Each subsidiary must have and exercise (1) the bank's powers, as stated in a resolution by the bank's board of directors that explains why the subsidiary was formed, and (2) any other powers provided to it by law.

Each subsidiary must act through its board of directors or managing members, at least half of whom must be either the bank's (1) directors or their designees or (2) officers or employees.

Under the bill, the bank's subsidiaries are considered quasi-public agencies and have the privileges, immunities, tax exemptions, and other exemptions of the Infrastructure Bank.

The bill prohibits a subsidiary from hiring or retaining employees and its governing documents must require it to dissolve after completing the purpose for which it was formed. The subsidiaries may sue and be sued, but their liability is limited solely to their assets, revenues, and resources, without recourse to the bank's general funds, revenues, resources, or other assets.

The bill authorizes the subsidiaries to (1) assume or take title to property subject to an existing lien, encumbrance, or mortgage and (2) mortgage, convey, or dispose of their assets and pledge their revenues to secure any borrowing, specifying the circumstances under which they may do so. The Infrastructure Bank may assign a subsidiary any rights, moneys, or other assets it has under any governmental program. No subsidiary may borrow without approval from the bank's board of directors.

Under the bill, any of the bank's officers or employees appointed as a subsidiary's member or officer are not personally liable for the subsidiary's debts, obligations, or liabilities. The subsidiary must, and the bank may, hold harmless and indemnify an appointee from financial loss and expense if the appointee was acting in the discharge of his or her duties or within the scope of his or her employment and

the actions were not wanton, reckless, willful or malicious.

The bill allows the Infrastructure Bank and its subsidiaries to take any actions necessary for a subsidiary to qualify and remain a tax exempt corporation under federal tax law.

It also allows the bank to make loans to the subsidiaries from its assets and the proceeds from its bonds, notes, and other obligations, as long as the source and security for the loans' repayment comes from the subsidiary's assets, revenues, and resources.

### ***Loan Standards***

Prior to making a loan, loan guarantee, or any other financial support or risk management for an infrastructure project, the bank must develop governance standards, including rules, borrower eligibility policies and procedures, terms and conditions of support, and other relevant criteria, standards, or procedures.

### ***Funding Sources***

Under the bill, the bank may receive funds from (1) state transportation-related fees, including bus, rail, ferry, parking, and electric vehicle charging fees, and (2) any federal funds that can be used for the bank's infrastructure improvement projects. However, the bank may only receive these funds if they are not required to be deposited into the Special Transportation Fund or into the Connecticut Port Authority's or Connecticut Airport Authority's accounts.

The bank may also receive funds from the following:

1. proceeds from state general obligation bond sales;
2. funds from the Special Transportation Fund, as long as the funds are used solely for transportation purposes;
3. charitable gifts, grants, investments, contributions, and loans from individuals, corporations, banks, institutional or other investors, university endowments, and philanthropic foundations;

4. earnings and interest derived from financing the bank's infrastructure improvement projects; and
5. if the bank is Community Development Financial Institution Fund (CDFI) certified, funding from the federal Department of Treasury, the federal CDFI Fund, if applicable, and loans and investments from other institutions seeking to meet their obligations on the federal Community Reinvestment Act.

The bank may also contract with private sources to raise capital, as long as the return on the debt or equity is set by the bank's board of directors.

Under the bill, the Infrastructure Bank may seek to qualify as a Community Development Financial Institution (CDFI). If approved under federal law, the bank is treated as a qualified community development entity for certain federal tax and funding incentives.

The bill prohibits the bank from receiving any funds collected or derived from tolls unless the General Assembly authorizes tolling.

### ***Project Financing Limits***

The bank may finance infrastructure projects, including municipal improvement projects, as long as financing from the bank and other nonequity financing sources is 80% or less of the project's cost. The bank may provide up to 100% of the value of refinancing a project.

### ***Financing Fees***

The bank may charge reasonable financing fees on its financing activities to cover reasonable costs and expenses, as determined by the board.

### ***Rates and Rate Information***

The bank must make publicly available its rates, terms, and conditions for all of its financing support transactions, including formal annual reviews by a private auditor and the comptroller. Details of the bank's financial support transactions must be publicly available on the Internet, although the bill allows such disclosure to be

restricted for trade secrets, confidential commercial or financial information, and any other information exempt from public records disclosure.

***Liability***

Under the bill, directors, officers, employees, and agents of the Infrastructure Bank acting within the scope of their duties are immune from personal liability resulting from exercising or carrying out any of the bank’s purposes or powers.

The bank is subject to suit and liable solely from its own assets, revenues, and resources, without recourse to the General Fund or the Green Bank’s assets.

***State Pledge***

Under the bill, the state of Connecticut pledges to not limit or alter the bank’s rights until its contracts and obligations are met, unless adequate provision is given through law to protect individuals entering into contracts with the bank. The pledge must be interpreted and applied broadly to effectuate and maintain the bank’s financial capacity to perform its essential public and governmental functions.

Under the bill, the bank’s contracts and obligations are obligatory, and the bank may appropriate during contract terms an amount of money that, together with other funds, is sufficient to pay the contracts and obligations or meet any contractual covenants or warranties.

***Infrastructure Improvement Fund***

The bill establishes the Infrastructure Improvement Fund within the Connecticut Infrastructure Bank. Under the bill, the fund may receive any amount required by law to be deposited into it and any federal funds available to the state for infrastructure improvement investments. The funds may be used by the bank to promote investment in infrastructure improvement according to the plan it develops. The bill authorizes the funds to be used to provide or pay for the following, among other things:

1. low-cost financing and credit enhancement mechanisms for

- projects and technologies;
2. reimbursements to the bank for operating expenses, including administrative expenses;
  3. capital costs incurred by the bank in operating the fund, implementing the comprehensive plan, or any other permitted activities;
  4. disbursements from the fund to develop and implement the plan;
  5. grants, direct or equity investments, contracts or other actions that support research, design, development, manufacture, commercialization, deployment, and installation of infrastructure improvement; and
  6. other actions that expand the expertise of individuals, businesses, and lending institutions with regard to infrastructure improvement.

### **Governance**

Under the bill, the Infrastructure Bank is governed by a 12-member board of directors, 11 voting and one nonvoting. Eight voting members are appointed and three serve ex-officio: the treasurer and the economic and community development and transportation commissioners. Such ex-officio members may instead send their designees. In addition to the 11 voting members, the bank's president serves as a non-voting member.

Each appointed board member must have knowledge and expertise in matters related to the bank's purpose and activities. Table 1 lists the appointed voting directors, their appointing authority, and their initial terms.

**Table 1: Connecticut Infrastructure Bank Board Appointees**

<b>Appointing Authority</b>	<b>Number of Appointments</b>	<b>Initial Term</b>	<b>Qualifications</b>
Governor	Four	Four years for two directors  Two years for two directors	One four-year appointee must be a labor representative; the other must have experience planning and installing infrastructure improvement projects  Two-year appointees must have experience financing or developing infrastructure projects
House speaker	One	Four years	Must have experience financing or developing infrastructure improvement projects
Senate president pro tempore	One	Four years	Must represent an environmental organization
House minority leader	One	Three years	Must have experience in investment fund management
Senate minority leader	One	Four years	Must represent a business development organization

After the initial terms, the appointing authorities must appoint successor appointees, who each have four-year terms that begin on July 1 in his or her appointment year. Board vacancies must be filled for the unexpired term by the original appointing authority.

The governor appoints the chairperson, and the board selects (1) a vice-chairperson from among the members and (2) any other needed officers. The board must adopt any bylaws and procedures necessary for the bank's functions, and may establish committees and subcommittees as well.

**Procedures.** The bill requires the directors to adopt written procedures for the following:

1. adopting an annual budget and operations plan, including a requirement that the board approve it before the budget or plan takes effect;
2. hiring, dismissing, promoting, and compensating the bank's employees, including an affirmative action policy and a requirement for board approval before a position is created or filled;
3. acquiring real and personal property and personal services, including a requirement that the board approve any non-budgeted expenditure over \$5,000;
4. contracting for financial, legal, bond underwriting, and other professional services, including a requirement that the bank solicit proposals at least once every three years for each service it uses;
5. issuing and retiring the bank's bonds, notes, and other obligations;
6. awarding loans, grants, and other financial assistance, including the application process, eligibility criteria, and the bank's staff and directors role; and
7. using surplus funds as the law allows.

All of these procedures must be adopted according to the notice requirements for quasi-public agencies (generally, at least 30 days' notice in the *Connecticut Law Journal*).

**Conflicts of Interest.** The bill prohibits board members from being a trustee, director, partner, or officer of any business (person, firm, or corporation), or having a financial interest in a business if the business participates in or receives support from programs that the bank developed, administers, or otherwise supports. However, it is not a

conflict of interest for a member of the bank's board to serve as a director, member, or officer of a joint venture that the bank enters into as the bill allows.

**Annual Reporting and Audits.** The board must annually report to the Department of Transportation on the bank's activities and provide a copy of the report to the banking; commerce; energy and technology; environment; finance, revenue and bonding; and transportation committees. The report must include (1) a description of the bank's programs and activities during the reporting period and (2) the salary of each employee with an annual salary greater than \$250,000.

Under the bill, the bank must:

1. be audited annually according to generally accepted auditing standards and by independently certified public accountants (the bill specifies these auditors must be independent and have no interest in the bank);
2. make all records and accounts available to the Auditors of Public Accounts on demand; and
3. comply with all state ethics laws.

**Additional Reporting.** The bill requires any entity receiving funding from the bank for an infrastructure project to provide to the board an annual statement certified by its chief financial officer describing all sources and uses of funds in as much detail as the bank requires. The bank must maintain any audits and certified statements for at least five years.

## **§ 2 — BONDING AUTHORITY**

The bill allows the bank to issue bonds with terms of up 30 years. The bonds are secured by the bank's financial resources.

The bill allows the bank to determine how it will issue and repay the bonds and specifies the kinds of terms and conditions it may include in its agreements with the bondholders. The bill makes the

bonds securities in which governments and private entities may invest. The bank may sell the bonds (1) at a public sale on sealed proposals at a price and time it chooses or (2) by negotiating with investors.

Under the bill, the bank may issue bonds to refund its outstanding bonds and specifies conditions for doing so.

### ***Tax Provisions***

The bill exempts the principal and interest payments to bondholders from all state and local taxes except estate and succession taxes, but requires bondholders to include these payments when computing excise and franchise taxes.

### ***Bondholder Protection***

The bill authorizes or requires several actions to assure bondholders that the bank will repay them. Under the bill, the state pledges not to alter the bank's rights until (1) the bonds are paid off or (2) it makes adequate provisions to protect the bondholders. The bonds are not state obligations and only the bank is liable for them. The bill also allows the bank to secure that pledge by entering into agreements with a trustee representing the bondholders' interests (i.e., a trust of indenture agreement). The bill requires the bank to secure principal and interest payments by pledging its revenue, which is also immediately subject to lien without any action on the bondholders' part.

It exempts board directors and those executing bonds or notes from personal liability. And it gives bondholders and their trustees the right, subject to the provisions of the bond resolution, to take legal action to force the board to perform its duties. The bill makes the bond proceeds and other revenue connected with the bonds trust funds, which must be used as the bond resolution specifies.

### ***Project Maintenance Fees and Other Revenue***

The bill authorizes the bank to fix, revise, charge, and collect rates, rents, fees, and charges for (1) the use of each project and (2) services

furnished by each project. The bank may also contract with another party to set and collect such fees. The fees must be set so that, when combined with other available revenue, they provide funds sufficient to:

1. pay for the project's maintenance, repair, and operating costs, to the extent the cost has not otherwise been adequately paid;
2. pay the principal and interest on any bond the bank issued for the project, as the payments become due; and
3. create and maintain any required reserves.

Under the bill, any charges imposed by the bank are not subject to any supervision or regulation, other than by the bank itself.

A sufficient amount of revenue derived from a bond must be regularly set aside in a sinking or similar fund (i.e., a fund to gradually accrue debt repayment funds). The bank may establish such funds for each project or one aggregate fund for all projects. Under the bill, the sinking fund is pledged and charged with repaying the bond as it becomes due. Any rates and fees pledged by the bank are immediately subject to lien, which is valid and binding against all valid claims regardless of any notice or recording requirements in existing law.

### **§§ 8 & 9 — FREEDOM OF INFORMATION ACT PROVISIONS**

The bill allows the Infrastructure Bank's executive director to exempt certain confidential records from disclosure under the state's Freedom of Information Act if he or she deems that their disclosure reasonably presents a safety risk, including risk of harm to any person or government owned or leased institution. This provision applies to, among other types of records: security manuals, engineering and architectural drawings of government buildings and facilities, security systems operational specifications, emergency plans, and logs or records of security personnel movements.

The bill also (1) exempts the Infrastructure Bank from a requirement to notify the administrative services or emergency services

commissioner of confidential record requests and (2) specifies that an appeal of the bank's denial to release these records is against the bank's executive director.

## **§ 7 — GREEN BANK**

The bill allows the Connecticut Green Bank to enter into a memorandum of understanding or other arrangement with the infrastructure bank to share space, office systems, and staff administrative support.

### **BACKGROUND**

#### ***Related Bills***

HB 7280, favorably reported by the Transportation Committee, creates the quasi-public Connecticut Transportation Finance Authority, which among other things must establish a Connecticut Transportation Infrastructure Bank.

sSB 927, favorably reported by the Banking Committee, expands the Connecticut Green Bank's duties to include (1) developing separate programs to finance and otherwise support environmental infrastructure and (2) promoting investment in such infrastructure.

### **COMMITTEE ACTION**

Banking Committee

Joint Favorable

Yea 9 Nay 6 (03/12/2019)

Government Administration and Elections Committee

Joint Favorable

Yea 11 Nay 6 (05/22/2019)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 32 Nay 19 (05/28/2019)