
SENATE BILL 5837

State of Washington

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1993 Regular Session

By Senators Quigley, Moore, Pelz, A. Smith, Prentice, Bauer, Hargrove, Sheldon, Erwin, Niemi, Jesernig and Talmadge

Read first time 02/17/93. Referred to Committee on Government Operations.

1 AN ACT Relating to state and local government finance; adding a new
2 chapter to Title 39 RCW; and providing an expiration date.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND DECLARATIONS. The
5 legislature finds and declares that the issuance by state and local
6 governments of bonds and other obligations, and the investment of
7 moneys in connection with these obligations, involve exposure to
8 changes in interest rates; that a number of financial instruments are
9 available to lower the net cost of these borrowings, to increase the
10 net return on these investments, or to reduce the exposure of state and
11 local governments to changes in interest rates; that these reduced
12 costs and increased returns for state and local governments will
13 benefit taxpayers and ratepayers; and that the legislature desires to
14 provide state and local governments with express statutory authority to
15 take advantage of these instruments. In recognition of the complexity
16 of these financial instruments, the legislature desires that this
17 authority be subject to certain limitations, and be granted for an
18 initial period of two years.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
2 requires otherwise, the definitions in this section apply throughout
3 this chapter:

4 (1) "Financial advisor" means a financial services or financial
5 advisory firm:

6 (a) With recognized knowledge and experience in connection with the
7 negotiation and execution of payment agreements by governmental
8 entities;

9 (b) That is acting solely as financial advisor to the governmental
10 entity in connection with the execution of the payment agreement and
11 the issuance or incurring of any related obligations, and not as a
12 principal, placement agent, purchaser, underwriter, or other similar
13 party, and that does not control, nor is it controlled by or under
14 common control with, any such party;

15 (c) That is compensated for its services in connection with the
16 execution of payment agreements, either directly or indirectly, solely
17 by the governmental entity; and

18 (d) Whose compensation is not contingent upon the execution of the
19 payment agreement or the issuance or incurring of any related
20 obligations.

21 (2) "Governmental entity" means state government or local
22 government.

23 (3) "Local government" means any city, county, port district, or
24 public utility district that has outstanding obligations in an
25 aggregate principal amount of at least one hundred million dollars as
26 of the date a payment agreement is executed.

27 (4) "Obligations" means bonds, notes, bond anticipation notes,
28 commercial paper, or other obligations for borrowed money, or lease,
29 installment purchase, or other similar financing agreements or
30 certificates of participation, in such agreements.

31 (5) "Payment agreement" means a written agreement which provides
32 for an exchange of payments based on interest rates, or for ceilings or
33 floors on these payments, or an option on these payments, or any
34 combination, entered into on either a current or forward basis.

35 (6) "State government" means (a) the state of Washington, acting by
36 and through its state finance committee, (b) the Washington health care
37 facilities authority, (c) the Washington higher education facilities
38 authority, (d) the Washington state housing finance commission, or (e)
39 the state finance committee upon adoption of a resolution approving a

1 payment agreement on behalf of any state institution of higher
2 education as defined under RCW 28B.10.016: PROVIDED, That such
3 approval shall not constitute the pledge of the full faith and credit
4 of the state, but a pledge of only those funds specified in the
5 approved agreement.

6 NEW SECTION. **Sec. 3.** AUTHORITY TO ENTER INTO PAYMENT AGREEMENTS.

7 (1) Subject to subsections (2) and (3) of this section, any
8 governmental entity may enter into a payment agreement for the purpose
9 of managing or reducing the governmental entity's exposure to
10 fluctuations or levels of interest rates, in connection with, or
11 incidental to, the issuance, incurring, or carrying of specific
12 obligations. No governmental entity may carry on a business of acting
13 as a dealer in payment agreements.

14 (2) No governmental entity may enter into a payment agreement under
15 this chapter unless it first:

16 (a) Finds and determines, by ordinance or resolution, that the
17 payment agreement will (i) reduce the amount or duration of its
18 exposure to changes in interest rates; or (ii) result in a lower net
19 cost of borrowing with respect to the related obligations, or a higher
20 net rate of return on investments made in connection with, or
21 incidental to, the issuance, incurring, or carrying of those
22 obligations;

23 (b) Obtains, on or prior to the date of execution of the payment
24 agreement, a written certification from a financial advisor that (i)
25 the terms and conditions of the payment agreement and any ancillary
26 agreements, including without limitation, the interest rate or rates
27 and any other amounts payable thereunder, are commercially reasonable
28 in light of then existing market conditions; and (ii) the finding or
29 determination contained in the ordinance or resolution required by (a)
30 of this subsection is true and correct.

31 (3) All payment agreements shall be entered into pursuant to
32 competitive solicitation. The director of the office of financial
33 management shall establish procedures for the competitive solicitation
34 and the acceptance of offers to enter into payment agreements.

35 NEW SECTION. **Sec. 4.** PAYMENT AGREEMENTS--TERMS. (1) Subject to

36 subsections (2), (3), and (4) of this section, payment agreements
37 entered into by any governmental entity may include those payment,

1 term, security, default, remedy, termination, and other terms and
2 conditions, and may be with those parties, as the governmental entity
3 reasonably deems necessary or desirable.

4 (2) No governmental entity may enter into a payment agreement
5 unless:

6 (a) Each other party to the agreement has a rating from at least
7 two nationally recognized credit rating agencies, as of the date of
8 execution of the agreement, that is within the two highest long-term
9 investment grade rating categories, without regard to subcategories, or
10 the payment obligations of the party under the agreement are
11 unconditionally guaranteed by an entity that then has the required
12 ratings; or

13 (b) The obligations under the payment agreement of any party that
14 does not have the credit rating required by (a) of this subsection are
15 collateralized by obligations deposited with the governmental entity or
16 an agent of the governmental entity that: (i) Would be legal
17 investments for the governmental entity under chapter 39.60 RCW; and
18 (ii) maintain a market value of not less than one hundred five percent
19 of the value of the payment agreement to the governmental entity, as
20 such value may be defined and determined from time to time under the
21 terms of the payment agreement.

22 (3) No governmental entity may enter into a payment agreement with
23 a party having a credit rating specified in subsection (2)(a) of this
24 section unless the agreement provides that, in the event such party's
25 credit rating falls below the level required by subsection (2)(a) of
26 this section, such party will comply with the collateralization
27 requirements contained in subsection (2)(b) of this section.

28 (4) No governmental entity may enter into a payment agreement
29 unless:

30 (a) The nominal amount of the payment agreement does not exceed the
31 principal amount of the obligations with respect to which the payment
32 agreement is made; and

33 (b) The term of the payment agreement does not exceed the term of
34 the obligations with respect to which the payment agreement is made.

35 NEW SECTION. **Sec. 5.** PAYMENT AGREEMENTS--PAYMENTS--CREDIT
36 ENHANCEMENTS. (1) Subject to any covenants or agreements applicable to
37 the obligations issued or incurred by the governmental entity, any
38 payments required to be made by the governmental entity under a payment

1 agreement entered into in connection with the issuance, incurring, or
2 carrying of those obligations may be made from money set aside or
3 pledged to pay or secure the payment of those obligations or from any
4 other legally available source.

5 (2) Any governmental entity may enter into credit enhancement,
6 liquidity, line of credit, or other similar agreements in connection
7 with, or incidental to, the execution of a payment agreement. The
8 credit enhancement, liquidity, line of credit, or other similar
9 agreement may include those payment, term, security, default, remedy,
10 termination, and other terms and conditions, and may be with those
11 parties, as the governmental entity reasonably deems necessary or
12 desirable.

13 NEW SECTION. **Sec. 6.** CALCULATIONS REGARDING PAYMENT OF
14 OBLIGATIONS--STATUS OF PAYMENTS. (1) Subject to any covenants or
15 agreements applicable to the obligations issued or incurred by the
16 governmental entity, if the governmental entity enters into a payment
17 agreement with respect to those obligations, then it may elect to treat
18 the amounts payable from time to time with respect to those obligations
19 as the amounts payable after giving effect to the payment agreement for
20 the purposes of calculating:

21 (a) Rates and charges to be imposed by a revenue-producing
22 enterprise if the revenues are pledged or used to pay those
23 obligations;

24 (b) Any taxes to be levied and collected to pay those obligation;
25 and

26 (c) Payments or debt service on those obligations for any other
27 purpose.

28 (2) A payment agreement and any obligation of the governmental
29 entity to make payments under the agreement in future fiscal years
30 shall not constitute debt or indebtedness of the governmental entity
31 for purposes of state constitutional and statutory debt limitation
32 provisions if the obligation to make any payments is contingent upon
33 the performance of the other party or parties to the agreement, and no
34 moneys are paid to the governmental entity under the payment agreement
35 that must be repaid in future fiscal years.

36 NEW SECTION. **Sec. 7.** EXPIRATION DATE--VALIDITY OF CONTRACTS. (1)
37 This act shall expire on January 1, 1995.

1 (2) The expiration of this act on January 1, 1995, shall not affect
2 the validity of any contracts entered into under section 3 of this act
3 prior to that date.

4 NEW SECTION. **Sec. 8.** AUTHORITY CUMULATIVE. The powers conferred
5 by this chapter are in addition to, and not in substitution for, the
6 powers conferred by any existing law, and the limitations imposed by
7 this chapter do not directly or indirectly modify, limit, or affect the
8 powers conferred by any existing law.

9 NEW SECTION. **Sec. 9.** LIBERAL CONSTRUCTION. This chapter shall be
10 liberally construed to effect its purposes.

11 NEW SECTION. **Sec. 10.** CAPTIONS. Captions used in this chapter do
12 not constitute any part of the law.

13 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act
14 or its application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 12.** LEGISLATIVE DIRECTIVE. Sections 1 through
18 11 of this act shall constitute a new chapter in Title 39 RCW.

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