

2 **SSB 5837 - H COMM AMD ADOPTED AS AMENDED 4-18-93**

3 By Committee on Local Government

4

5 Strike everything after the enacting clause and insert the  
6 following:

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

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

25 (1) "Financial advisor" means a financial services or financial  
26 advisory firm:

27 (a) With recognized knowledge and experience in connection with the  
28 negotiation and execution of payment agreements;

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

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

4 (d) Whose compensation is not based on a percentage of the notional  
5 amount of the payment agreement or of the principal amount of any  
6 related obligations.

7 (2) "Governmental entity" means state government or local  
8 government.

9 (3) "Local government" means any city, county, port district, or  
10 public utility district, or any joint operating agency formed under RCW  
11 43.52.360, that has or will have outstanding obligations in an  
12 aggregate principal amount of at least one hundred million dollars as  
13 of the date a payment agreement is executed or is scheduled by its  
14 terms to commence or had at least one hundred million dollars in gross  
15 revenues during the preceding calendar year.

16 (4) "Obligations" means bonds, notes, bond anticipation notes,  
17 commercial paper, or other obligations for borrowed money, or lease,  
18 installment purchase, or other similar financing agreements or  
19 certificates of participation in such agreements.

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

24 (6) "State government" means (a) the state of Washington, acting by  
25 and through its state finance committee, (b) the Washington health care  
26 facilities authority, (c) the Washington higher education facilities  
27 authority, (d) the Washington state housing finance commission, or (e)  
28 the state finance committee upon adoption of a resolution approving a  
29 payment agreement on behalf of any state institution of higher  
30 education as defined under RCW 28B.10.016: PROVIDED, That such  
31 approval shall not constitute the pledge of the full faith and credit  
32 of the state, but a pledge of only those funds specified in the  
33 approved agreement.

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

35 (1) Subject to subsections (2) and (3) of this section, any  
36 governmental entity may enter into a payment agreement in connection  
37 with, or incidental to, the issuance, incurring, or carrying of  
38 specific obligations, for the purpose of managing or reducing the

1 governmental entity's exposure to fluctuations or levels of interest  
2 rates. No governmental entity may carry on a business of acting as a  
3 dealer in payment agreements.

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

6 (a) Finds and determines, by ordinance or resolution, that the  
7 payment agreement, if fully performed by all parties thereto, will (i)  
8 reduce the amount or duration of its exposure to changes in interest  
9 rates; or (ii) result in a lower net cost of borrowing with respect to  
10 the related obligations, or a higher net rate of return on investments  
11 made in connection with, or incidental to, the issuance, incurring, or  
12 carrying of those obligations;

13 (b) Obtains, on or prior to the date of execution of the payment  
14 agreement, a written certification from a financial advisor that (i)  
15 the terms and conditions of the payment agreement and any ancillary  
16 agreements, including without limitation, the interest rate or rates  
17 and any other amounts payable thereunder, are commercially reasonable  
18 in light of then existing market conditions; and (ii) the finding and  
19 determination contained in the ordinance or resolution required by (a)  
20 of this subsection is reasonable.

21 (3) Prior to selecting the other party to a payment agreement, a  
22 governmental entity shall solicit and give due consideration to  
23 proposals from at least two entities that meet the criteria set forth  
24 in section 4(2) of this act. Such solicitation and consideration shall  
25 be conducted in such manner as the governmental entity shall determine  
26 is reasonable.

27 NEW SECTION. **Sec. 4.** PAYMENT AGREEMENTS--TERMS. (1) Subject to  
28 subsections (2), (3), and (4) of this section, payment agreements  
29 entered into by any governmental entity may include those payment,  
30 term, security, default, remedy, termination, and other terms and  
31 conditions, and may be with those parties, as the governmental entity  
32 deems reasonably necessary or desirable.

33 (2) No governmental entity may enter into a payment agreement under  
34 this chapter unless:

35 (a) The other party to the agreement has a rating from at least two  
36 nationally recognized credit rating agencies, as of the date of  
37 execution of the agreement, that is within the two highest long-term  
38 investment grade rating categories, without regard to subcategories, or

1 the payment obligations of the party under the agreement are  
2 unconditionally guaranteed by an entity that then has the required  
3 ratings; or

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

11 (ii) The payment obligations of the other party under the agreement  
12 are collateralized by direct obligations of, or obligations the  
13 principal and interest on which are guaranteed by, the United States of  
14 America, that (A) are deposited with the governmental entity or an  
15 agent of the governmental entity; and (B) maintain a market value of  
16 not less than one hundred two percent of the net market value of the  
17 payment agreement to the governmental entity, as such net market value  
18 may be defined and determined from time to time under the terms of the  
19 payment agreement.

20 (3) No governmental entity may enter into a payment agreement with  
21 a party who qualifies under subsection (2)(a) of this section unless  
22 the payment agreement provides that, in the event the credit rating of  
23 the other party or its guarantor falls below the level required by  
24 subsection (2)(a) of this section, such party will comply with the  
25 collateralization requirements contained in subsection (2)(b) of this  
26 section.

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

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

32 (b) The term of the payment agreement does not exceed the final  
33 term of the obligations with respect to which the payment agreement is  
34 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 deems reasonably 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 Except as provided in subsection (3) of this section, no governmental

1 entity may enter a payment agreement under section 3 of this act after  
2 June 30, 1995.

3 (2) The termination of authority to enter payment agreements after  
4 June 30, 1995, shall not affect the validity of any payment agreements  
5 or other contracts entered into under section 3 of this act on or  
6 before that date.

7 (3) A governmental entity may enter into a payment agreement under  
8 and in accordance with this chapter after June 30, 1995, to replace a  
9 payment agreement that relates to specified obligations issued on or  
10 before that date and that has terminated before the final term of those  
11 obligations.

12 (4) The state finance committee shall make a report to the  
13 appropriate legislative committees on payment agreements authorized in  
14 this act. The report shall include the governmental entity entering  
15 into a payment agreement, the amount of the agreement, the expected  
16 savings resulting from the agreement, the transactions cost, and any  
17 other information the state finance committee determines relevant. The  
18 report shall be submitted on November 30, 1993, and December 30, 1994.

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

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

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

28 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act  
29 or its application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 12.** LEGISLATIVE DIRECTIVE. Sections 1 through  
33 11 of this act shall constitute a new chapter in Title 39 RCW.

1        NEW SECTION.    **Sec. 13.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and shall take  
4    effect immediately."

--- **END** ---