

2 **SSB 5837 - H COMM AMD ADOPTED 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 NEW SECTION. **Sec. 8.** AUTHORITY CUMULATIVE. The powers conferred
13 by this chapter are in addition to, and not in substitution for, the
14 powers conferred by any existing law, and the limitations imposed by
15 this chapter do not directly or indirectly modify, limit, or affect the
16 powers conferred by any existing law.

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

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

21 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act
22 or its application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 12.** LEGISLATIVE DIRECTIVE. Sections 1 through
26 11 of this act shall constitute a new chapter in Title 39 RCW.

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

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